



**MIDDLEBURG TOWN COUNCIL
REGULAR WORK SESSION
MEETING MINUTES**



October 29, 2015

PRESENT: Vice Mayor C. Darlene Kirk
Councilmember Kevin Hazard
Councilmember Trowbridge Littleton
Councilmember Catherine “Bundles” Murdock
Councilmember Erik J. Scheps
Councilmember Kathy Jo Shea
Councilmember Mark T. Snyder

STAFF: Martha Mason Semmes, Town Administrator
Rhonda S. North, MMC, Town Clerk
William M. Moore, Town Planner
A. J. Panebianco, Chief of Police
Cindy C. Pearson, Economic Development Coordinator

ABSENT: Mayor Betsy A. Davis

The Town Council of the Town of Middleburg, Virginia held their regular monthly work session on Thursday, October 29, 2015 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Vice Mayor Kirk called the meeting to order at 6:00 p.m.

Annual Audit Report – Mitchell & Co.

Sandy Tondreau, of Mitchell & Company, distributed a draft copy of the annual audit report for the fiscal year ending June 30, 2015, as well as a copy of her presentation. She reported that the Comparative Balance Sheet (Page 1 of presentation), which compared the funds to the year before, showed that all of the Town’s funds had cash balances that were up. Ms. Tondreau noted that the receivables were up in the General Fund from the previous year mostly due to grant reimbursements. She advised that the Interfund Balances were related to the Water/Sewer and General Funds and were for interest payments for some of the bond debt that was allocated to the General Fund. Ms. Tondreau noted that after the year closed out, they did some journal entries to transfer those monies into the “right buckets” so this would not be as large next year. She reported that the Fixed Assets in the General Fund increased this year due to the Marshall/Madison Street Improvement Project and the Asbury Church, which was donated to the Town.

Ms. Tondreau advised that the Other Assets line item was the Town’s deferred pension expense. She reminded Council of the new accounting standards for a government’s recording of pensions. Ms. Tondreau noted that in the past, this was recorded as an expense for the contribution to the retirement plan, with other information being disclosed on how the plan was doing. She advised that the Town was now required to record its obligations, whether as a liability related to the pension or an asset. Ms. Tondreau noted that this was unusual in the sense that the Town was always a year behind because the actuary report never coincided with the audit year and explained that the report was as of June 30, 2014. She advised that the deferred asset was the amount paid in 2015 and noted that it was not recorded as an expense this year; therefore, it was brought forward as a prepaid amount.

Ms. Tondreau reported that the Payables were up a little in the General Fund. She explained that they were related to the construction projects and noted that there were end-of-the-year invoices that were still owed. Ms. Tondreau reminded Council that the Accrued Expenses included items such as accrued wages related to the timing of paychecks. She advised that the Long-Term Debt included a small portion of the debt that was allocated to the General Fund years ago for projects that were done and noted that this decreased because the Town made principal payments on it. Ms. Tondreau reminded Council that the Other Obligations included accrued vacation and sick leave, as well as the new pension liability. She reported that according to the actuary report, the Town's pension fund was underfunded by \$400,000 at the end of 2014. Ms. Tondreau advised that while this seemed like a large number, it was not the fault of the Town as it has paid what it was told to pay. She opined that because municipalities underfunded their pensions, the Town would see a rate increase. Ms. Tondreau reminded Council that this number would vary with the market and where the money was invested. She reported that the good news was that the amount of the underfunding decreased from the previous year. Ms. Tondreau advised that all of the municipalities were getting hit on this to varying degrees.

Ms. Tondreau reported that the Town's fund balance was up from \$2.6 million last year to \$4.2 million this year. She noted that this took into account the adjustment for the pension liability. Ms. Tondreau advised Council that the Health Center Fund was in line with the year before. She reported that the biggest difference was in accounts payable, which included deferred rental because a tenant prepaid their rent. Ms. Tondreau reported that the Water/Sewer Fund was also up and advised that the biggest cash difference was related to the bond money that was received this past year. She reported that the receivables were down and reminded Council that in the prior year they were up because there was a billing error that occurred, meaning some of the money was not received until the end of the year. Ms. Tondreau advised that this has now evened out, although there would always be some receivables because the June billing did not go out until July. She reported that the fixed assets were down due to depreciation and the long-term debt was up due to the 2014 bond.

Profit & Loss Summaries (Page 2) – Ms. Tondreau reported that the General Fund had over a \$1 million surplus, which was very good. She advised that while property taxes were up slightly, the majority of the increase was related to meals and occupancy taxes and business license fees. Ms. Tondreau reported that the Health Center Fund experienced a slight profit this year. She reminded Council of the discussions they had about the charitable donations exceeding what the fund was making and opined that they had done a good job of looking at this. Ms. Tondreau advised that while it was great to use the fund to help the community, the Town did not want to deplete it. She reported that the expenses in the Health Center Fund were not as high as the building did not require as many repairs this year. Ms. Tondreau noted that the Water/Sewer Fund had a deficit once the adjustments were made; however, the operating profit was better than in prior years.

Operating Revenue (Page 3) – Ms. Tondreau reported that the General Fund's operating revenue increased in 2014 and 2015, with the introduction of Salamander's revenues. She further reported that the Water/Sewer Fund's operating revenues were even up.

General Fund – Other Revenues (Page 4) – Ms. Tondreau advised Council that from 2011 to 2015, those categories that saw major changes included the meals tax, which was now up to \$763,000; the occupancy tax, which was now up to \$631,000; and the BPOL tax, which was up quite a bit.

Water & Sewer Fund Revenues (Page 5) – Ms. Tondreau advised Council that the increases were not as dramatic as in the General Fund; however, there were increases in the revenue. She reminded them that they increased the sewer rates slightly. Ms. Tondreau advised that the tower rental revenue was down due to the loss of the Nextel lease. She noted that the Other Category varied as it included availability fees, which could vary from year to year. Ms. Tondreau advised that none were received this year.

General Fund – Budget-to-Actual (Page 6) – Ms. Tondreau advised Council that the actual revenues were up significantly from the budget, mostly in the same categories. She further advised that the actual expenditures were down in total compared to the budget. Ms. Tondreau reported that in total, the Town came in under budget.

General Fund – Surplus Fund Balance (Page 7) – Ms. Tondreau advised Council that the Town went from a deficit in 2006 to a \$2.6 million surplus in 2015.

Revenue/Expense Summary (Page 8) – Ms. Tondreau reminded Council that accountants must do entries, such as depreciation, which they do for accounting purposes. She advised that this could make something look like a deficit. Ms. Tondreau explained that this chart provided the true net operating costs in the Water/Sewer Fund. She noted that the availability fees and tower income were removed as this was not true operating revenue, and the depreciation expense was added back. Ms. Tondreau advised that the amount was reduced by the principal debt service, resulting in a net operating profit of \$140,000, which was in line with the prior year. She noted that this was up from the previous years; therefore, they were not too concerned about it.

Percentage of Gallons Billed to Pumped (Page 9) – Ms. Tondreau reminded Council that this was an issue that they have raised in past years. She noted that the staff worked on this and reported that the percentage of gallons billed to pumped was now at seventy-eight percent (78%), which was an all-time high. Ms. Tondreau advised Council that this accounted for the increases in the water and sewer revenues, as the Town could bill for all of the water that was used.

Town Issues (Page 10) – Ms. Tondreau noted that they were required to communicate with the Council and to bring any issues to their attention. She further noted that they worked closely with the staff, including holding a meeting with the Town Administrator and Economic Development Coordinator to go over the audit in detail and to give them some adjustments to make. Ms. Tondreau reported that they found nothing unusual or out of the ordinary. She opined that the Health Center Fund was in a great position. Ms. Tondreau reiterated that in the past, there have been deficits and noted that they have cautioned Council on the need to watch that. She opined that the Council did a great job doing so this past year. Ms. Tondreau reiterated that there were revised pension reporting requirements. She noted that the Town only had employees in the General Fund. Ms. Tondreau advised that they were only required to show those adjustments in the governmental wide statements; therefore, they did not actually give the staff any journal entries to put into the system. She explained that as such, the Council would not see the pension numbers in their monthly treasurer's report and reiterated that it was only required to be included in the annual report. Ms. Tondreau reminded Council that the Town has done what it was asked as far as payments; therefore, the liabilities were not the fault of the Town. She opined that VRS would adjust the rates in order to get the numbers more in line. Ms. Tondreau reported that the Town did have a lot of cash and suggested the Council discuss some investment options. She noted that the Town did have some money in CDs already. Ms. Tondreau reminded Council that governments were limited in what they could invest in. She noted that some of the money was spoken for in the form of capital projects; however, she suggested the Council consider putting some of the excess cash somewhere where it could earn interest. Ms. Tondreau advised Council that the Town's CDs were doing well and noted that they provided \$5,000 this year in interest. She reported that there was a delinquent receivable related to an old water tower amount and

suggested the Council may wish to consider writing that off. Ms. Tondreau noted that she has provided the information to the staff so they could discuss it with the Council. She advised that the Town also had some older utility bill amounts that some customers owed and suggested they may wish to consider writing those off as well.

Councilmember Shea noted that while the Town was in the black, its costs were going up and it would incur unexpected expenses.

Councilmember Snyder noted that some of the money the Town had was going to be used for planned expenses. He further noted that the Utility Fund had a lot of projected expenses over the next three to four decades and advised that the Council has been building a reserve so it would not have to pull all of the money for them out of one budget.

Councilmember Shea noted that the Town also had plans for projects such as the main street project. She stressed that when talking about a surplus, the Council also need to say that “this was not cash in the Town’s pocket”.

Councilmember Murdock noted that the Town also had debt to repay.

Council Appointment – Acting Town Treasurer

Councilmember Murdock moved, seconded by Councilmember Snyder, that Council appoint Martha Mason Semmes as the Acting Town Treasurer for the Town of Middleburg.

Vote: Yes – Councilmembers Kirk, Hazard, Littleton, Murdock, Scheps, Shea and Snyder

No – N/A

Abstain: N/A

Absent: Mayor Davis

Councilmember Hazard recused himself as he had a conflict of interest related to the next agenda item.

Council Approval – Site Plan Waiver – 209 E. Washington Street – Catawba Corp.

Town Planner Moore advised Council that the property currently housed the Middleburg Country Inn and explained that it could potentially be reused by a purchaser who was looking to convert the use to a general office use. He reminded them that normally when a property that was non-conforming as to site improvements changed use, it must come into conformance with the site improvement requirements. Mr. Moore opined that this situation was unique in that it involved two separate parcels, with the structure and majority of the parking being located on one lot. He advised that the separate lot was not improved with structures but contained the primary ingress/egress to the structure and a small amount of parking. Mr. Moore explained that because the plan was to continue to use the ingress/egress, he must look at this as one property in terms of site improvements.

Town Planner Moore advised that the applicant applied for a site plan waiver for the frontage improvements along Jay Street, which would include some pavement widening and the installation of curb, gutter and sidewalk. He reminded Council of the West Federal Street Office Building, which was recently completed, that installed all of those improvements. Mr. Moore reported that the pavement currently tapered from Washington Street until it widened at Federal Street. He reported that the sidewalk was not yet completed for the Federal Street Office Building as they were working on an issue related to a utility pole and guide wires that were

currently located where the sidewalk should be installed. Mr. Moore advised that the owners were looking to grant an easement and relocate the sidewalk to their property, which would require a redrawing of the site plan.

Town Planner Moore advised Council that normally, he would not support a request of this nature; however, it was unique. He explained that the applicant's position was that if he looked to develop the vacant parcel in the future, he did not want to be hindered by the site improvements, specifically the entrance. Mr. Moore advised that while the applicant has said that he could come up with something, he would prefer not to do the improvements until the vacant lot was developed.

Town Planner Moore advised Council that the Planning Commission deliberated on this request and had mixed feelings. He noted that their main concern was the pedestrian connection and advised that they were not as concerned with widening the pavement, installing curb and gutter or the construction of a new entrance as they saw the applicant's point about maintaining flexibility for future development. Mr. Moore reiterated that the Commission was concerned about the pedestrian connection and recommended the Council approve the waiver subject to a pedestrian connection of some sort being required. He advised that if the Council accepted that recommendation, a site plan would still have to be done for the parking, which could include a plan for the pedestrian connection from where it ended on Federal Street up to Washington Street. Mr. Moore noted that the route and surface material would still have to be worked out. He advised that this would be a temporary improvement and suggested it may be an asphalt trail. Mr. Moore reminded Council that a lot of people walked along that stretch of the road. He reiterated that the Planning Commission's recommendation was to waive the full frontage improvements, subject to a pedestrian connection being constructed. Mr. Moore advised that if approved, they would work on a site plan for the connection. He noted that the Council also had the ability to deny the waiver, which would mean the applicant would then be required to install the frontage improvements. Mr. Moore advised that the Council could also approve the site plan waiver without including the Planning Commission's recommendation.

Town Planner Moore noted that the Town Administrator asked him why this item was placed on the agenda as an action item when it was not previously discussed with the Council. He explained that this was because he was unable to attend the regular meeting and his absence slowed the process. Mr. Moore suggested that if additional time was needed by the Council to consider this request, it could be tabled.

Councilmember Littleton opined that the Commission's recommendation made sense. He further opined that facilitating the availability of a pedestrian access would satisfy the Town's goal.

Councilmember Shea disagreed. She advised that if the applicant was saying he would divide off the parcel, then she could say the improvements could wait; however, he was saying that this may be done some day, which meant the pedestrian work would have to wait until maybe some day in the future. Ms. Shea advised that the Town may miss an opportunity to make a sidewalk connection if it approved this request. She noted, however, that she was willing to be persuaded otherwise. Ms. Shea questioned what would occur if the lot was not developed for thirty years.

Councilmember Snyder noted that when the lot that abutted Jay Street was developed, it would require the installation of a sidewalk and gutter. He questioned why it was reasonable to waive the frontage improvements if someone wanted to change the use of the property and advised that he did not see a compelling reason to waive a requirement when there was a development proposal before the Council. Mr. Snyder questioned whether the Council would waive the improvements again if it received another request. He expressed concern that the Council was not adhering to its zoning ordinance.

Councilmember Shea advised that if the applicant asked to wait for a given period of time, she would feel more comfortable with the request. Councilmember Snyder agreed that he could be persuaded to vote for the request if it was for a temporary deferral for two years. He opined that the change of use should trigger the need for improvements.

Councilmember Scheps questioned whether the applicant would work with the staff on the design of a temporary trail.

Town Administrator Semmes suggested more information was needed. She noted that if this was not a concrete sidewalk in the right-of-way, VDOT would not accept it for maintenance.

Councilmember Murdock inquired as to the location of the trail. Town Planner Moore advised Council that if this request was approved, the nature of the trail would have to be worked out with the staff and Planning Commission. He confirmed it would be on the applicant's property and would have to be privately maintained.

Councilmember Snyder suggested the Council table action and ask the Planning Commission to provide additional details.

Councilmember Shea questioned whether the staff or the Planning Commission would work with the applicant. Town Planner Moore confirmed he would; however, the Commission was aware that he would bring the details to them for their review. He questioned whether the Council would be comfortable with the Planning Commission's recommendation enough to leave the determination of the details to them. Councilmembers Murdock and Littleton agreed they would.

Town Planner Moore noted that this would still return to the Council as it would require an easement for the public access.

Bill Turnure, architect, appeared before the Council representing the applicant. He advised them that if they wanted the improvements installed, the boxwood bushes would have to be removed and the access would be moved to the south. Mr. Turnure noted that a couple of trees would also have to be removed for the new street access. He advised that as to future development of the vacant lot, the structure could front Route 50 or Jay Street; therefore, they didn't know where the access should be located. Mr. Turnure advised that if they installed the improvements and removed the trees and bushes, there would be an empty lot with no vegetation. He noted that their thought was to install a sidewalk as best they could and to leave the vegetation so the lot would be more attractive until it was developed.

Town Administrator Semmes questioned whether a trail could be installed and the trees and bushes saved. Mr. Turnure confirmed it could. He noted that they may lose one tree but hoped to save the boxwoods.

Councilmember Snyder noted that his main concern was that this was a change of use. He advised that if this use stayed in place for a long time, the improvements would not be installed until there was another change of use. Mr. Snyder noted that the Town would be giving up the installation of curb and gutter.

Town Planner Moore reminded Council that there was no guarantee the property would develop and could stay this way in perpetuity. He advised that the only reason he considered this was because it was unique in that it involved two parcels.

Councilmember Snyder noted that the Town would have an undefined trail with no maintenance. He advised that he would prefer to see the details of the trail ironed out before the Council considered approval of this request. Mr. Snyder noted that it was incumbent upon the applicant to convince the Council that this was a reasonable plan and opined that it was not.

Councilmember Shea advised that in order to convince her, she would need an idea of what was planned and a time limit for the installation of the improvements. She noted that she was talking about getting more information about what was planned before the Council made a decision.

Councilmember Littleton noted that the Council would not know what would happen with the land until someone went through the development process.

Councilmember Snyder noted that the Council was being asked to grant a waiver that was not fully defined for an undetermined period and advised that he was not comfortable with that.

Councilmember Murdock questioned whether the installation of the improvements could be tied to a change of use. Town Planner Moore reminded Council that there were two separate lots and that the applicant was requesting the Council waive the improvements that would be on the frontage attached to the vacant parcel. He advised that in the future if something happened on the vacant property, there would be a requirement for the installation of the improvements unless the development was a single-family dwelling. Mr. Moore explained that a site plan was not required for a single-family dwelling and advised that if that was the case, there would be no sidewalk.

Councilmember Murdock questioned whether it could be required for this property only. Town Planner Moore opined that it could not. He suggested he talk with the Town Attorney if the Council wished to consider that. The Council held further discussion related to this request.

Councilmember Littleton moved, seconded by Councilmember Murdock, that Council approve a waiver of complete frontage improvements along Jay Street because requiring improvements at this time could restrict future development of Lot B. Councilmember Littleton further moved, seconded by Councilmember Murdock, that this approval is subject to the provisions of a public pedestrian connection (such as a temporary trail) between the sidewalk network on Washington Street and the newly constructed sidewalk on the adjacent Federal Street Office Building property acceptable to Town staff.

Vote: Yes – Councilmembers Littleton, Murdock and Scheps
No – Councilmembers Shea and Snyder
Abstain: Councilmembers Hazard and Kirk
Absent: Mayor Davis

Council Approval – Contract Award – East End Water System Improvements

Councilmember Snyder moved, seconded by Councilmember Shea, that Council award a construction contract in the amount of \$312,960 to A&M Concrete of Dulles, Virginia for the East End Water System Improvement Project. Councilmember Snyder further moved, seconded by Councilmember Shea, that Council authorize the Town Administrator to execute the contract agreement for this project on behalf of the Town.

Vote: Yes – Councilmembers Kirk, Hazard, Littleton, Murdock, Scheps, Shea and Snyder
No – N/A
Abstain: N/A
Absent: Mayor Davis

Council Discussion – Zoning Text Amendment – Floodplain Overlay District

Councilmember Shea questioned whether there were locations that were likely to flood. Town Planner Moore advised that there were from the standpoint of a one hundred year flood. He further advised that as to properties that had improvements, the likelihood was minimal. Mr. Moore noted the flood map and explained that the special flood hazard areas were the areas of concern. He further explained that as to Zone X, there was minimal chance of flooding; therefore, there were no regulations that would affect development adjacent to those areas.

Town Planner Moore advised that the bulk of the ordinance addressed the special flood hazard area. He noted that while the re-write was large, in terms of actual changes, they were minimal. Mr. Moore explained that the updates were being proposed because FEMA identified areas of their previous standards that they wanted to improve and required that the ordinance be brought into compliance with those standards. He advised that in terms of the model ordinance, items were deleted that did not apply to Middleburg.

Town Planner Moore noted that when a property owner did a substantial improvement or new construction, the federal minimum standard was the construction's base elevation must be at or above the base flood elevation level; however, he was proposing it be increased to one foot above that elevation. He advised that this was what most jurisdictions required.

Councilmember Shea inquired as to who would be the floodplain administrator. Town Planner Moore confirmed he would. Councilmember Shea noted that the ordinance referred to him as the Town Planner and asked that he check this in terms of consistency.

Town Planner Moore noted that there were only six flood insurance policies issued in the town. He opined that this was a lot of work for six policies; however, it was needed so they could continue to participate in the flood insurance program.

The Council agreed to schedule a public hearing for their December 10th meeting.

Council Discussion – Short-term Rentals

Town Planner Moore reminded Council that when they last discussed the concept of short-term rentals, they requested examples of how other jurisdictions dealt with the issue and noted that he has provided a couple. He stressed that he was not recommending them. Mr. Moore advised that he did not include the one from Virginia Beach because it was hard to navigate the ordinance and noted that it was geared toward vacation rentals. He suggested that if the Council was interested in it, he could get more information.

Town Planner Moore reminded Council that the Mayor asked how Airbnb operated and noted that there were many different business models. He explained that transient occupancy referred to an occupancy that occurred for fewer than thirty (30) days. Mr. Moore advised that any occupancy that was longer must be treated as a residential occupancy, which the Town could not regulate. He reminded Council that the residential zoning ordinances allowed for bed & breakfasts in the R-1 through R-4 Districts and board/rooming houses in the R-3 and R-4 Districts. Mr. Moore noted that they were allowed with a special use permit; therefore, they were not by-right uses.

Town Planner Moore reiterated that what the Council was talking about fell under different models. He cited the example of Airbnb that linked renters with properties. Mr. Moore reiterated that there could be many different models. He suggested that this could involve an extra room in

a home that could be rented out while the owner resided there, someone who traveled and rented his house while he was not there or someone who bought a property specifically for transient rental use. Mr. Moore noted that the later may be the case for the property that has been reported as providing short-term rentals. He advised Council that he was currently pursuing that violation.

Councilmember Snyder requested that there be no impediment for someone who liked to travel on occasion and wanted to swap houses on a short-term basis. He asked that this be permissible in any residential zone. Mr. Snyder suggested the Council look at each residential zone in terms of whether it was reasonable for someone to buy a property and use it almost exclusively for short-term rentals, not as a resident but as the owner of the property. He further suggested that they determine in what residential zones it would be appropriate to allow a resident to offer short-term room rentals. Mr. Snyder noted that when most people got a roommate, it was usually for more than thirty days. He advised that he was only talking about transient rentals. Mr. Snyder explained that he would like to key whatever the Council came up with to the four residential zones and advised that he did not know whether this would be the same for all of them as what was reasonable in one zone may not be in another. He advised that he wanted to protect the neighbors from someone who was just buying a property to rent it through Airbnb or another similar business model. Mr. Snyder noted that he was surprised this was an issue in the R-2 District as that district was defined to bring a previously built neighborhood into compliance with the Town Code. He explained that it was not intended to be used as a model for new neighborhoods. Mr. Snyder suggested it was incumbent upon the Council to do its homework on this issue. He further suggested that if the Council needed to do something to put a stop to an ongoing nuisance, it should consider that independent of this discussion.

Town Planner Moore confirmed the Council did not need to do anything to address the existing use at this time as this was not a use provided for in the Town Code; therefore, it was not allowed. He advised that if it was being conducted, it would be a violation of the Town Code. Mr. Moore reported that he was pursuing the existing violation and reiterated that no action was needed by the Council on that matter.

Town Planner Moore reminded Council that the staff had heard rumors that transient rentals could be planned for some of the new residential development. He advised that he wanted to make sure they looked at this proactively. Mr. Moore reiterated that this was a use that was not allowed and could only occur with an ordinance amendment. He suggested the Council think about the types of situations under which they would be comfortable allowing transient rentals.

Councilmember Snyder reiterated that one solution may not fit all of the districts. He suggested it would behoove the Council to consider the options carefully and to identify something that made sense for the town.

Councilmember Hazard questioned the need to differentiate between zones. Councilmember Snyder noted that each of the zones was set up for a reason and suggested it made sense to think about each. He further noted that the answer may be “no, don’t do it”. Mr. Snyder advised that he was willing to entertain the options.

Councilmember Murdock noted that she understood from Salamander’s website that the owners may rent out their properties to a family for two weeks. She advised that she did not want this to occur on her street, which was where the Town could get into zones.

Vice Mayor Kirk noted that she did not want cases in which someone purchased a house with no plans to live in it but rather wanted to tell Salamander to rent it out.

Councilmember Shea advised Town Planner Moore that she would rather see a proposal that was more concise than complicated. Councilmember Snyder agreed and noted that he did not like the Charlottesville example. Town Planner Moore noted that the reason he highlighted that one was that Charlottesville took a different approach and defined this use as a home occupation. He advised that he only highlighted the parts of the ordinance that were pertinent to Middleburg.

Councilmember Shea noted that she liked the idea of addressing items such as business licenses; however, she opined that Charlottesville's format was too complicated.

Councilmember Murdock inquired as to the status of this item. Councilmembers Shea and Snyder noted that the Council has given the staff some feedback so they could work on this further.

Councilmember Murdock noted the example of a home on Route 611 that was used for transient rentals, with the neighborhood being up in arms. She advised that this was the kind of atmosphere that she did not want in Middleburg.

Vice Mayor Kirk expressed concern about not knowing who was coming and going in a neighborhood.

Prem Devadas, of Salamander Resort & Spa, advised Council that he appreciated this discussion. He further advised that Salamander was opposed to any type of operation that was set up for an individual owner to rent his place with no regulations. Mr. Devadas noted that as the Council started to study this issue, he wanted them to be aware that there may be a different way to carve this out in addition to neighborhoods. He advised that he was familiar with something that occurred with resorts and towns in that the regulations required an organization, such as his, to be responsible for the rentals. Mr. Devadas noted that there was no regulation of Airbnb, including tax accountability, and opined that this was a problem where Airbnb operated. He opined that they were not reporting those occupancies and paying taxes and that there was no accountability to anyone. Mr. Devadas stressed that Salamander was talking about something completely different and advised that there would be a mechanism to collect and pay occupancy taxes. He noted that, in addition, any guest that would be staying at a Residence at Salamander property would fall under the auspices of the resort's policies and procedures the same as any guest.

Councilmember Shea opined that what Mr. Devadas was talking about was an aspect of what Councilmember Snyder was saying with regard to the need to look at what happened in different zones. She opined that the staff had the Council's input.

Mr. Devadas requested permission to meet with the staff to discuss this as what Salamander was proposing was different than what others were doing. Council agreed the staff needed that input.

Town Planner Moore advised that while he welcomed the chance to meet with Mr. Devadas to hear Salamander's vision for their development, he was more concerned about the Council's vision for the town as a whole. He noted that once he got an idea of that and the Council's comfort level, he could start to draft something. Mr. Moore advised that he did not yet have enough information on which to draft something.

Vice Mayor Kirk advised that she was not sure she was comfortable having this use in residential communities.

Councilmember Snyder agreed this use needed to be controlled. He suggested consideration be given to requiring a special use permit.

Town Planner Moore advised Council that they had the ability to look at each application for each property and noted that one property may be different than another due to proximity to the neighbors and the ability to provide off-street parking. He further noted that the Council could also talk to the applicant about performance standards. Mr. Moore acknowledged the issues associated with property purchased for use solely for transient rentals, such as the property owner dropping off a key and leaving. He cited Charlottesville as an example of a community that had large events and the inability to meet the associated lodging needs, and noted that they had owners who wanted to drop off a key and get out of town. Mr. Moore advised that the ordinance required that a responsible party be located within thirty miles or a thirty minute radius of the property in case the renter had issues or there was a law enforcement issue. He suggested these were the kinds of things that needed to be considered.

Vice Mayor Kirk advised that she wanted residential property to be just that - residential. She further advised that she did not consider transient housing appropriate for residential areas. Ms. Kirk described an incident involving a house that was currently being used for transient rentals and noted that it was not appropriate for children to watch the behavior that was occurring there.

Councilmember Littleton suggested this was something the Town must monitor. He further suggested that if the Town wanted to allow this, the owner must be qualified. Mr. Littleton suggested the staff develop a list of what needed to be done.

Vice Mayor Kirk suggested that Airbnb not be allowed to operate in the town. Town Planner Moore noted that Airbnb was just a website that linked two people. He suggested that if someone operated under the appropriate regulations, they could still use a site such as Airbnb as a way to link people up.

Councilmember Murdock noted that the residents cared about the streets and their neighbors. She questioned how the community would be affected if people started renting out their houses for transient occupancy.

Councilmember Shea suggested that just because the Town allowed transient occupancy, it did not mean it would be allowed at every other house. She noted that there would be restrictions.

Town Planner Moore opined that what the Council was saying was that if it wanted to allow something different than what was currently allowed, it must be under a special use permit so the Council could look at the individual applications. He noted that one member indicated she did not want transient occupancy and reminded Council that the Town Code already allowed for it in the form of bed & breakfasts and rooming houses as a special use permit in all residential districts. Mr. Moore advised that it has just not received any applications. He questioned whether the Council wanted to continue to only allow what was already allowed or whether it wanted to expand what could be considered under a special use permit.

Vice Mayor Kirk questioned whether the property owner would have to apply for a special use permit each time he/she wished to rent out the house. Town Planner Moore confirmed they would not as this would be a one-time application.

Councilmember Snyder noted that he was talking about limits that would prevent the most egregious uses, including property owners that acquired a property solely for the purpose of utilizing that kind of model. He further noted that he was not concerned with incidental transient rentals.

Councilmember Littleton noted that he was okay with this provided the property owner secured the proper documentation through the Town.

Councilmember Snyder reiterated that it needed to be clearly incidental, no more than one or two weeks per year.

Councilmember Hazard opined that Middleburg was not the only municipality struggling with this issue. He noted that the staff looked at two. Mr. Hazard advised that in reading the newspapers, this appeared to be a pandemic. He suggested the staff conduct more research. Vice Mayor Kirk suggested the staff look at Harpers Ferry and other small towns that have large festivals.

Town Planner Moore noted that often times these types of emerging models are not regulated and opined that there were not a lot of examples of ways to regulate them. He advised that Councilmember Snyder's comments were helpful in terms of what he saw as acceptable.

Vice Mayor Kirk opined that not everyone agreed with Councilmember Snyder. She noted that there was a time when Middleburg had a hard time because of a lot residences were being bought for workforce housing; however, the Town was able to turn that around. Ms. Kirk advised that she wanted to have communities and residential areas.

Mr. Devadas advised Council that he could help the Town Planner find resort/residential regulations. He noted that they pointed to the difference between that model and others.

Councilmember Shea advised that she wanted the staff to work on possibilities.

Councilmember Murdock suggested the need to keep the balances right. She noted that the Town had a large resort and advised that she did not want to tip the residential/hotel scale so more transient occupancy was provided than residential. Ms. Murdock reminded Council that when they held their retreat, they talked about the town and what they wanted to see. She opined that people came to town because of Salamander and suggested that if not done properly, Middleburg could turn into a hotel town.

Town Planner Moore noted that this was why he was trying to discuss this early. He opined that it was important to consider that even with the existing nature of the town, there was a transitional nature. Mr. Moore reminded Council that some residents were here for equine purposes only for six months of the year. He noted that if they rented their house when they were not here, it would be considered residential occupancy as long as it was rented for thirty days or longer. Mr. Moore advised that as to Salamander's residential development, Steve Plescow indicated that those houses may be purchased by people looking for a part-time home. He noted that the Council must consider what it wanted to allow with regard to occupancy when the owner was away.

Mr. Devadas assured the Council that purchasing a home at Salamander to rent was not financially feasible and would not happen.

Councilmember Shea noted that she was not as concerned about what could be seen now as with what would happen when the town became a resort town and people started investing in properties. She noted that they would do so in order to make money, which would destroy the town.

Town Planner Moore noted that the Town Attorney was researching the implications and advised that she indicated that it was straight forward as far as taxation and licensing was concerned.

Council Discussion – Special Events Permit

Town Planner Moore reminded Council that they held a discussion of the draft ordinance that was presented to them during their September meeting. He reported that the sub-committee reconvened and discussed the Council's comments and concerns and wanted to represent the ordinance in the same form without any changes so the Council could get a more detailed explanation of why the changes were proposed.

Town Planner Moore advised Council that the policy provided links to the draft ordinance so the Council could see where they translated to the changes in the Town Code. He noted that one difference from the version the Council saw last was to Section 6-7, which included criteria for the permit approval as requested by the Town Administrator. Mr. Moore reminded Council that she would remain the approving authority. He advised that the criteria would include things that would be considered in case the Town was forced to deny a permit, such as conflicting events.

Councilmember Shea noted that this did not mean a permit would have to be denied. She suggested the Town could ask the applicant to hold the event on another weekend.

Councilmember Murdock questioned the language regarding funerals. Councilmember Snyder noted that he had concerns regarding funerals and wakes as well. He noted that these were not long-term planned events.

Councilmember Murdock advised that she had a problem requiring a special event permit in residential areas. She reminded Council that people lived in a village where everyone respected their neighbors. Ms. Murdock suggested this be started in the business area only. She advised that she was not aware of any problems in the residential areas.

Town Planner Moore explained that the reason the sub-committee asked to include it was that they felt that they had done the task that was asked of them by the Council of evaluating the issues. He further explained that some of the concerns were related to occasions when there could be excessive vehicles on a street that could disrupt the peace of the neighborhood or create excessive noise.

Councilmember Murdock noted that the Town had a noise ordinance. She further noted that the streets were public.

Town Planner Moore opined that having advance notification of an event may make it easier for the Town to prevent issues.

After some discussion, the Council agreed the ordinance amendment should only apply to the business district. They asked that the draft amendment include the term "or designee" when referring to the Town Administrator.

Town Council Reports

Councilmember Snyder reported that the Wellhead Protection Advisory Committee would like to continue to address the Council annually.

Town Clerk North advised Council that the discussion of the annual committee reports to the Council was scheduled for their next meeting.

Councilmember Shea reported that Go Green would be presenting a proposal to the Council at their next meeting for purchasing recycling bins.

Discussion

Vice Mayor Kirk advised Council that it was her understanding that the Hammer Down BBQ food truck was only supposed to be here on weekends; however, it was here on a Friday. She suggested the need for tighter regulations on food trucks.

Councilmember Shea advised Council that she wanted to look at the ordinance in order to get a clear understanding of what the Town was trying to achieve.

Town Planner Moore reminded Council that his goal was to see where the special events ordinance ended up and to then re-address the food truck issue. He advised that Hammer Down BBQ's application was not limited to the weekends. Mr. Moore noted that the owner did indicate that he would be here primarily on the weekends; however, he was not approved specifically for that time frame. He advised that the application did limit the hours of operation, unless the applicant notified him otherwise. Mr. Moore advised that a change of hours was something that could be done on a one time basis and noted that he spoke with the owner in advance of the Film Festival in the event that he wanted to operate later than 6:00 p.m.; however, he did not. He reminded Council that the approval of the food truck limited its operation up to Christmas in Middleburg, at which time it would end unless the owner sought special approval before reopening in April.

Vice Mayor Kirk noted that there was an RV parked on Washington Street over the weekend and questioned whether that needed an approval. She expressed concern as it was a big weekend in Middleburg. Councilmember Scheps noted that the vehicle was associated with a marketing event held at Highcliffe Clothiers.

Councilmember Shea questioned whether the discussion on parking meters would return to the Council before the streetscape project was completed. Town Administrator Semmes expressed hope that it would and explained that the discussion was deferred as the staff was trying to get a sample parking station installed. She advised that the Town Planner agreed to take on getting that organized; however, he had other priorities at this point.

Councilmember Shea expressed a desire to have a definite date as to when this item would return to Council. Town Administrator Semmes advised that it would return in January.

Councilmember Shea reminded Council that some time ago, they discussed the need for an emergency shelter location. She advised that she would like to return to that discussion.

Councilmember Murdock advised Council that the Community Center was not equipped to serve as an emergency center.

Councilmember Shea suggested that if the reason the Community Center could not serve as the emergency shelter was due to the lack of a generator, the Town could talk about partnering with them to purchase one. She noted that she would also like to talk to Salamander about the potential for having the resort serve as the emergency shelter.

Economic Development Coordinator Pearson advised Council that an emergency shelter must have the ability to store water, food, cots, etc. and noted that there was no such storage area at the Community Center. She noted that the school had the same issue.

Councilmember Murdock reported that there was no facility in town that could meet the FEMA requirements to serve as an emergency shelter. She confirmed the Community Center would open its doors; however, it could not be designated as an emergency shelter.

Chief Panebianco advised Council that there would be an emergency shelter; however, it would not be in Middleburg.

Councilmember Murdock noted that during a bad storm, the residents could not get out of Middleburg.

Councilmember Shea requested that this item return to the agenda.

Chief Panebianco reported that there was a difference between a Red Cross designated shelter and a shelter that could be used and explained that there could be both.

Mr. Devadas advised Council that while Salamander had an emergency generator to power life safety features, such as emergency lighting, it could not power cooking. He further advised that they would participate in being a community shelter.

Councilmember Murdock asked that the farm animal discussion return to the agenda.

Closed Session – Property Acquisition

Councilmember Murdock moved, seconded by Councilmember Shea, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(3) pertaining to the discussion or consideration of the acquisition of real property for a public purpose, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. Councilmember Murdock further moved, seconded by Councilmember Shea, that this matter be limited to a discussion of property acquisition for the Police Department. Councilmember Murdock further moved, seconded by Councilmember Shea, that in addition to the Council, the following individuals be present during the closed session: Martha Semmes and AJ Panebianco. Councilmember Murdock further moved, seconded by Councilmember Shea, that the Council thereafter reconvene in open session for action as appropriate.

Vote: Yes – Councilmembers Kirk, Hazard, Littleton, Murdock, Scheps, Shea and Snyder

No – N/A

Abstain: N/A

Absent: Mayor Davis

Vice Mayor Kirk asked that Council certify that to the best of each member’s knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting, which each member so did. She reminded those present for the closed session that any discussion that occurred within it should be treated as confidential.

Councilmember Murdock moved, seconded by Councilmember Snyder, that the Council authorize the Town Administrator to execute a three-year lease with a two-year renewal option in a form approved by the Town Attorney, with the owners of the condominium known as Building A, Units One and Two, Federal Court, in the amount of \$45,800 per year.

Vote: Yes – Councilmembers Kirk, Hazard, Littleton, Murdock, Scheps, Shea and Snyder
No – N/A
Abstain: N/A
Absent: Mayor Davis

There being no further business, Vice Mayor Kirk declared the meeting adjourned at 8:14 p.m.

APPROVED:

Darlene Kirk, Vice Mayor

ATTEST:

Rhonda S. North, MMC, Town Clerk