



MIDDLEBURG TOWN COUNCIL Regular Monthly Meeting Minutes



Thursday, December 8, 2016

PRESENT: Mayor Betsy A. Davis
Vice Mayor Darlene Kirk
Councilmember J. Kevin Daly
Councilmember Kevin Hazard
Councilmember Peter Leonard-Morgan
Councilmember Philip Miller
Councilmember Mark T. Snyder

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

ABSENT: Councilmember Trowbridge "Bridge" Littleton

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on Thursday, December 8, 2016 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Boy Scouts Garrett Bassinger, Assistant Patrol Leader First Class, and Patrick Carter, Second Class Patrol Leader, of Troop 2950, led Council and those attending in the Pledge of Allegiance to the flag.

Mayor Davis thanked everyone involved in helping with Christmas in Middleburg. She opined that it was an unbelievable day and advised that she had heard nothing but high praises. Ms. Davis noted that while the crowds were smaller, they were still large. She opined that the barricades were helpful and that the parking went well. Ms. Davis noted that by 5:30 p.m., everyone was gone and by 7:00 p.m., the barricades were gone. She reiterated her appreciation for everyone's hard work.

Councilmember Daly noted that he was out early and saw the Facilities & Maintenance Supervisor and Police Lieutenant with the barricades. He acknowledged that they were paid for the day; however, he noted that they worked willingly. Mr. Daly noted that he was at the Town Office at 8:00 a.m. for the police briefing and advised that the Economic Development Coordinator had already laid out the snacks for the entire day. He reminded Council that parades involved a lot of people and noted that a lot of activity occurred in the background. Mr. Daly commended the Economic Development Coordinator, Facilities & Maintenance Supervisor, Police Chief and police staff for a safe parade and a safe day.

Mayor Davis thanked Chief Panebianco and the members of the Police Department.

Vice Mayor Kirk thanked the Facilities & Maintenance Supervisor for getting the parking meters removed and the holes filled in one day.

Councilmember Miller noted that their removal made a difference in how the streetscape looked and made the parade day easier.

Appointment of Council Representative to Go Green

Mayor Davis appointed Councilmember Leonard-Morgan as the Council representative to Go Green.

Public Presentations – 2017 Virginia Legislative Session – Delegate Randy Minchew

Mayor Davis noted that Delegate Minchew needed to attend a NVTA meeting and advised that he would be late arriving at the Council meeting. She further noted that his presentation would be combined with the agenda item related to the Virginia Municipal League’s legislative priorities. Ms. Davis suggested that item be moved up on the agenda once Delegate Minchew arrived.

Approval of Minutes

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the October 27, 2016 Work Session and November 10, 2016 Regular Meeting minutes as amended.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

(Mayor Davis only votes in the case of a tie.)

Staff Reports

Vice Mayor Kirk noted that a large amount of treated water was lost due to a week-long water break at 106 Sycamore Street. She suggested the need to address those leaks quicker. Councilmember Snyder suggested the development of a plan would be a good topic of discussion for the Utility Committee.

Councilmember Hazard noted that since IES took over management of the Town’s utility system, it was much better and more professional. He advised that if there was a problem, they took care of it. Mr. Hazard thanked **Stuart Will, of IES**, for all he did for the Town.

Town Administrator Semmes reported that the staff received VDOT’s comments on the way finding sign plan. She advised that they were not as extensive as she thought they would be. Ms. Semmes noted the need to talk about a consultant and resolve the last few comments, at which point the plan could be approved by VDOT.

Town Administrator Semmes reported that the Facilities & Maintenance Supervisor was working to find someone to provide nice round black poles and noted that the first company he contacted was not helpful. She advised that he brought in another company, which was also capable of doing lighting work. Ms. Semmes reminded Council that they have talked about better lighting for the Christmas signs.

Vice Mayor Kirk noted that the lighting contained separate components and was very expensive. She asked that the staff look at what was available and how much it would cost.

Town Administrator Semmes noted that she was referencing the sign poles. She reminded Council that they would consist of a sheath and finial and were very expensive. Ms. Semmes reported that the staff would return to the Council with a proposal before making this purchase. Vice Mayor Kirk requested a breakdown of the costs.

Town Administrator Semmes reported that there was a recent news article on the 31st Artisan Trail in the Commonwealth, for which the Town provided money. She reminded Council that Visit Loudoun was working on this, along with the County’s economic development staff, and noted that the Middleburg Arts Council was a part of it as well. Ms. Semmes noted that similar trails in other parts of the state have quantified the revenue generated by such trails.

Town Administrator Semmes reported that she and Councilmember Snyder were working to update the utility rate model.

Town Administrator Semmes questioned whether the Council would like for her to arrange a vision/goal setting session after the first of the year. Vice Mayor Kirk suggested the Council needed to hold a Saturday session to talk about what the Council wanted to do and what changes it wanted to make. She noted that some of the new members of Council were asking about the committee structure.

Town Administrator Semmes proposed to secure a facilitator. She recommended the session be held somewhere other than the Town Office and suggested The Hill School or the Community Center.

Councilmember Snyder questioned who was shepherding the comprehensive economic development strategy and execution plan, as well as who was handling the procurement oversight. Town Administrator Semmes confirmed that she was handling the procurement oversight. She noted that this was recommended by EDAC. Ms. Semmes reported that an RFP must be developed based on what was learned from the RFI responses. Ms. Semmes noted that any contract would come to the Council for approval.

Town Clerk North reminded Council that the Police Chief has been talking about the parking software that the staff was interested in acquiring. She reported that while the Chief had completed his review of the six proposals received, she and the Town Treasurer must also review them. Ms. North explained that the staff needed to make sure the selected software was capable of doing everything the Town needed it to do and reiterated that they were working on that item. She noted that due to the tax and utility billings that were out, the staff had experienced a time crunch; however, they hoped to get to that item soon.

Councilmember Miller questioned whether the staff thought the software could be purchased by the end of the year. Town Clerk North advised that the plan was that once the staff was able to review the proposals, the Chief, Town Administrator, Town Treasurer and herself would meet to identify the Town's top two vendors. She further advised that the staff would meet with them either in person or via a telephone conference to discuss the software to make sure it could be customized to meet the Town's needs. Ms. North expressed hope that the software could be purchased once the staff was able to work out the details.

Mayor Davis noted the need to track the tickets and collect the fines. Town Clerk North reminded Council of the proposal to stop an individual's DMV privileges for a vehicle for past due citations and advised that she needed to make sure that if a citation was paid online that she was notified of it. She stressed the need to make sure that all of the components associated with parking tickets worked together.

Councilmember Snyder opined that the DMV stop records piece was becoming a controversial topic by the press. He advised that there were questions as to whether this was ethical.

Economic Development Coordinator Pearson reported that she was looking forward to securing the new accounting software.

Mayor Davis inquired as to the status of the new Town website. Economic Development Coordinator Pearson reported that she heard from them earlier in the week, after she lit a fire under them.

Councilmember Hazard noted that the Town worked with Bendure Communications. He reminded Council that the Town wanted to reduce the amount of promotion associated with Christmas in Middleburg.

Economic Development Coordinator Pearson confirmed that Bendure Communications did not send out a press release nor did they promote this event. She noted that it was on the calendar of events. Ms. Pearson opined that people already knew about it and reiterated that the information did not come from Bendure. She reported that the articles that were attached to her monthly report were ones that she simply found.

Town Planner Moore reported that he received inquiries regarding the zoning permit he issued for Pam Mickley Albers. He noted that a recent ABC permit notice for her location had raised questions. Mr. Moore advised that Ms. Albers applied for a home occupation for a home office and was operating a small wine importing business. He explained that she was importing small quantities and advised that she would not receive bulk deliveries or store wine. Mr. Moore reiterated that this was a home office and advised that she would have a couple of cases that she would take to locations for wine samplings. He advised that the orders would be through a direct shipment to the customer. Mr. Moore reported that there would be nothing outside of a home delivery at her location.

Councilmember Snyder opined that the ABC license notice was misleading. He noted that Ms. Albers was in sales and represented a winery; however, nothing was being shipped to her house, as the distribution was occurring at retail outlets. Mr. Snyder opined that Ms. Albers was only arranging for tastings for potential customers, who may then place an order with her, with the shipment going directly from the winery to the customer.

Town Planner Moore opined that there may be a step in between; however, nothing was being shipped to Ms. Albers. He noted that she applied for an ABC off premise license and advised that the advertisement for it raised a red flag with people.

Town Planner Moore reminded Council that during the last meeting, Councilmember Snyder asked the staff to look into the solar powered LED stop signs that were being used in Winchester. He advised that he was not making a recommendation; however, his report included basic information on what they were using, as well as a rough cost estimate. Mr. Moore noted that from his experience living in Winchester, they were extremely bright at night. He opined that they were not being used on a 24/7 basis. Mr. Moore advised that he would not recommend them for Middleburg as they provided too large a visual impact for this setting. He suggested that one option would be to activate them only when a vehicle was detected. Mr. Moore noted that this would be a more expensive option.

Councilmember Snyder agreed. He noted that he was not envisioning the lights would operate on a twenty-four hour basis. Mr. Snyder advised that he envisioned the Chief of Police would work on their proper set up. He noted the need for one at the entrance to the Salamander Resort as this had been a problem area. Mr. Snyder advised that, after that, he would defer to the Police Chief on where and if more were needed.

Mayor Davis noted that the staff talked to VDOT about installing rumble strips if they did not go with this type of sign. She suggested the need for something that drew ones attention to the fact that they were approaching a stop sign.

Town Planner Moore noted that there were other options that were a precursor to this type of sign. He suggested the need for a visual que to notify people that they were coming to a stop sign.

Councilmember Leonard-Morgan questioned whether what was proposed was the only way to display a solar panel and noted that it was a large eyesore. Town Planner Moore noted that there were other examples at the bottom of the page that were not as obtrusive. He opined that solar was an interesting option, as opposed to electric.

Mayor Davis suggested the installation of a sign below the stop sign to alert motorists that cross traffic would not stop. She noted that even motorists who stopped would pull out in front of traffic on the cross street as they believed it was a four-way intersection. Town Administrator Semmes noted that the Facilities & Maintenance Supervisor was talking about getting those signs.

Councilmember Snyder opined that the information provided was good. He suggested that if the Council did not do this right away, they may consider it in the future.

Town Treasurer Bott reported that she was opening the business license module in the new financial software, in addition to the payroll module. She reminded Council that business licenses had been processed using a DOS based system; however, she was using Excel to track them. Ms. Bott expressed hope to get everything entered into the new system and to make sure it was correct.

Councilmember Leonard-Morgan noted the variance between the November 2016 and November 2017 personal property and meals tax receipts. Economic Development Coordinator Pearson reminded Council that this time last year, the Town did not have a Treasurer. She further reminded them that it did not have one until January. Ms. Pearson noted that she was doing the work last year; therefore, the reports were not done at the proper time.

Town Treasurer Bott reported that the water revenues were also down due to the timing of when the information was entered into the system.

Councilmember Snyder requested a copy of the information so he could analyze the report.

Mayor Davis thanked Chief Panebianco and his troops for a job well done during Christmas in Middleburg.

Chief of Police Panebianco noted that this was his fifth parade and advised that it was the smoothest one from his vantage point. He noted that this was because of the staff - not just his, but everyone. Chief Panebianco reminded Council that a lot more went into it than people knew about. He noted that while the committee arranged a lot of what happened, the logistics of the day fell on everyone in the room to a certain degree. Chief Panebianco advised that he could not say enough about the Town staff, including the staff of the Police Department. He noted that he not only knew what his officers did, but what the rest of the staff did as well. Chief Panebianco thanked the Council for their support, especially when he had to put his foot down regarding the barricades. He reminded them that one of the side effects was that when twenty-eight thousand people were crossing the streets, they stopped traffic when they stepped in front of cars and advised that by controlling the intersections, the parade was safer.

Councilmember Snyder questioned who made the decision to preclude the Council from throwing candy to the children. Chief Panebianco opined that it was always prohibited as it was an insurance issue. Mayor Davis reported that she made the decision when the staff asked about buying some. She noted that it was a "mess" last year. Ms. Davis opined that no one should throw candy and suggested it should only be handed to the children. She noted that it was good the Council did not give out candy as most of the members had to walk. Ms. Davis advised that a lot of people were throwing it past the barricades. She reiterated that she made the decision.

Chief Panebianco opined that it was safer to not throw candy as kids would crawl under the barricades to get to it.

Mayor Davis opined that a lot of candy was given out and noted that her grandson gathered up a large bag of it.

Councilmember Leonard-Morgan opined that the barricades gave the spectators more room. Councilmember Miller noted that this also cleared the sidewalks.

Chief Panebianco advised that he had not done the math on attendance; however, he opined that it was the "right size" group. He noted that the Town Administrator was able to get VDOT to remove the sign bases from the street as they had promised they would do. Chief Panebianco advised that this was helpful for the parade as the kids would have tripped over them. He opined that this was important to the success of the parade and noted that every bit of safety helped.

Chief Panebianco reported that he was in Richmond yesterday to meet with other chiefs to talk about pre-filed legislation. He noted that he sent a report to the Town Administrator. Chief Panebianco advised that even though Middleburg was small, he still wanted to see what was going on and get the Town's voice heard.

Councilmember Hazard noted that the Chief's monthly report listed activity under the category of "suspicious events/destruction of property" and questioned whether this was a trend. Chief Panebianco reported that this was related to the sharp increase in arrests and advised that it was due to a series of vandalism that occurred related to political signs. He opined that it would be four years before this type of activity happened again. Chief Panebianco reminded Council that "suspicious events" could encompass a lot of things and advised that it could be something like someone knocking on a door and running away. He reiterated that the sharp increase in arrests and destruction of property correlated with each other and opined that they were an anomaly.

Chief Panebianco thanked everyone who helped with the Christmas in Middleburg event and noted that eight officers from other jurisdictions came in to help, not counting the ten members of the Sheriff's Office and four State Troopers.

Town Attorney Plowman noted that she submitted her resignation last month and advised that it was a difficult decision. She explained that she now served as legal counsel for another client, which required her to travel more. Ms. Plowman opined that her decision was in the best interest of the Town. She noted that her letter stated that the effective date would be December 31st; however, knowing the process involved in obtaining proposals and interviewing people, she would not leave the Town immediately. Ms. Plowman advised that, if the Council liked, she would be happy to continue to provide services until the Town hired someone else. She advised that she would prepare a supplemental letter to that affect if the Council desired.

Mayor Davis thanked Ms. Plowman for her service and noted that she would be missed. She wished her well.

Action Items (non-public hearing related)

Council Approval – Health Center Fund Donations

Vice Mayor Kirk advised Council that the initial letter that was sent to the organizations asked that they send in a request of what they would like to have. She noted that at that time, the Committee did not know that it would not have as much money. Ms. Kirk reported that Councilmember Miller had some ideas for addressing this.

Councilmember Miller reminded Council that the budget contained \$29,000 for charitable donations; however, because the Town had to do some repairs that ended up costing \$28,500, the profit was reduced to \$500. He acknowledged the precedent that had been set in years past of going forward with the donations; however, he noted that the documents that gave the Health Center to the Town made it clear that it was the profits that were to go to charity. Mr. Miller reiterated that there would be no profits this year. He opined that the Town needed to do a better job of managing the building so there would be profits for charitable donations. Mr. Miller reiterated that it did not currently. He acknowledged that this was unfair to the organizations who submitted a request for funding. Mr. Miller advised that he had been thinking about the best way to move forward. He opined that it was not the job of the Council to dole out taxpayer funds, even to causes that were wonderful and that affected the community. Mr. Miller noted that the donations should come from the profits of the Health Center. He encouraged the Council to exercise caution and noted that if the building continued to lose money and continued to donate to charities, it called into question the purpose of holding onto the property.

Councilmember Snyder agreed with the need to make sure the donations were not tracking too far from the profits of the Health Center. He advised that he was willing to make donations up to \$29,000; however, he could not go to \$47,000.

Councilmember Miller opined that the Council had three options. He advised that it could write a check in the amount of \$47,000, it could write a check for \$29,000 or it could take money from the Health Center reserves, in the amount of \$28,500, to cover the cost of maintaining and updating the building, leaving the \$29,000 available for donations. Mr. Miller noted that he was not comfortable taking the money from the General Fund.

Mayor Davis reminded Council that in the past, they said that “from now on, we’ll only donate what the fund had available to donate”. She questioned whether the letters that went to the organizations asked them what they would like to have.

Town Administrator Semmes reported that the letters stated that there was no guarantee of funding. Councilmember Miller agreed the letters did not say \$xx was available. Vice Mayor Kirk explained that the letters asked for information on the organizations’ budgets and what the money would be used for. She noted that the Community Center asked for money to support the pool and advised that not as many children used it this year.

Councilmember Miller opined that this was a difficult task. He noted that even if the Council wanted to donate \$29,000, it needed to make cuts. Mr. Miller questioned whether the cuts should be made across the board for everyone that requested funds or whether the donations should be based on need and how the organization affected the community the most.

Councilmember Hazard opined that the Health Center Advisory Board (HCAB) was good about finding people that needed things. He noted that in the past, the Council also gave money from the General Fund. Mr. Hazard advised that he was not saying the Council should automatically go to it; however, he noted that there was a mechanism in place to the money take out of the General Fund. He suggested that as the Council held its budget discussions that they talk about how to allocate funds. Mr. Hazard suggested there be a line item for the Health Center. He noted that the Health Center Fund had \$370,000 in its reserves and advised that if the Town spent \$47,000 of that per year, in eight years, there would be nothing left. Mr. Hazard opined that the Council could not do that. He reiterated that the committee did a good job of vetting people that needed money. Mr. Hazard questioned whether a mechanism could be set up (in the General Fund) so a percentage could be used for this purpose.

Vice Mayor Kirk opined that Councilmember Hazard was talking about a line item that may or may not be used. She suggested this was a good idea for next year's budget. Ms. Kirk noted that it may not be related to the Health Center and suggested it could be for something like a festival.

Councilmember Hazard noted that the Town already had a line item for special events, as well as a contingency reserve. He suggested the need to have a line item for this type of thing. Mr. Hazard reiterated that the HCAB was good about identifying groups in need. He noted that when they received the letters, they had no idea of what was available. Mr. Hazard reiterated the need for a contingency item that may or may not be used. He opined that the Town could not spend \$47,000.

Councilmember Leonard-Morgan opined that these were wonderful charities; however, he questioned how they came up with their requests. Vice Mayor Kirk explained that the Town had a form. She reported that the groups listed in the recommendation were ones that the Town had dealt with in the past, with the exception of Backpack Buddies, which was a new group that the Town found last year. Ms. Kirk explained that the idea was to find groups that directly impacted Middleburg. She reported that Backpack Buddies packed food for the weekends for children in three elementary schools. Ms. Kirk reiterated that the Board found things that impacted the citizenry/children. She reported that the Board sent out requests asking for their budget, what they needed and what the money would be used for. Ms. Kirk suggested that copies of those responses be distributed to the Council. She reported that the Economic Development Coordinator came up with the suggested amounts if the request was not fully funded in order to get to a number that was manageable and similar to the amount given in the past.

Economic Development Coordinator Pearson reported that the only reason she recommended that some get a larger amount was that she knew that some were funded by others. She cited Seven Loaves as an example. Vice Mayor Kirk noted that they also supported people from outside of the community.

Councilmember Snyder opined that they received a lot of support from the Town. He advised that how he delegated his personal money was that he donated to local organizations that impacted Middleburg.

Councilmember Miller suggested that if the Council agreed that \$29,000 was the amount they wanted to give, they must come up with a way to reach that number. He noted that they could approve what the Economic Development Coordinator suggested or they could do a flat cut across the board based upon the amount requested. Mr. Miller advised that the latter would be a thirty-eight percent (38%) cut for each group, which he preferred. He noted that another option was to not fund some groups.

Councilmembers Daly and Leonard-Morgan expressed a preference for a pro-rata share based on a thirty-eight percent cut across the board.

Councilmember Hazard suggested the Council return to the 2016 donation amounts, which were closer to \$29,000. He further suggested the Council approve funding based upon eighty percent (80%) of those amounts. Mr. Hazard noted that some organizations requested large increases in funding. He reiterated that some organizations doubled the amount of funding they were requesting. Mr. Hazard opined that some of those organizations did extensive fund raising and suggested they should not get huge increases from the Health Center Fund.

Councilmember Snyder advised that the only issue with following the 2016 donations was that the Middleburg Library received a donation; however, they did not submit a request this year. Councilmember Hazard noted that this would put the donations closer to the \$29,000.

Councilmember Snyder expressed a desire to provide donations based on a pro-rata share.

Town Administrator Semmes advised Council that the Loudoun Abused Women's Shelter was a wonderful organization; however, they did well in their fundraising and had a huge budget. She suggested that if the Council was looking for cuts, this may be a place to do so.

Councilmember Hazard advised that Seven Loaves did not professionally fund raise and noted that the Town's donation was a good part of their budget. He further advised that because stores have become better about spoilage, they did not receive the amount of food that they used to receive. Mr. Hazard also noted the legal ramifications of donating food that was out of date; therefore, the stores were less likely to give it away.

Economic Development Coordinator Pearson opined that basing the funding on a percentage was fair. Vice Mayor Kirk agreed; however, she opined that the smaller organizations really needed the money.

Mayor Davis suggested that just because an organization asked for a certain amount, this did not mean the Town should automatically give it to them.

Vice Mayor Kirk opined that FISH did a lot of good things for the people in town, as did Backpack Buddies. She reminded Council that the Town usually wrote checks this time of year due to the needs of the community.

Councilmember Snyder questioned whether the Council wished to base the donations on the amount requested or the 2016 donations.

Councilmember Hazard suggested the Council identify the total donation and send this item back to the HCAB to decide the individual amounts. Councilmember Snyder agreed and noted that they knew the people involved.

Vice Mayor Kirk advised that she could not get the committee together. She suggested that she and Councilmember Miller be allowed to make that decision. Councilmembers Snyder, Hazard and Daly agreed. Councilmember Snyder asked that they report back to the Council in January.

Councilmember Snyder moved, seconded by Councilmember Hazard, that Council approve donations in the amount of \$29,000 as charitable donations from the Health Center Fund, with the final distribution amounts to be determined by Councilmembers Kirk and Miller.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

(Mayor Davis only votes in the case of a tie.)

Councilmember Hazard suggested that moving forward, the HCAB try to come up with a mechanism for what to do with the cash reserves so that in six years, it would not be gone. He asked that they develop a plan for under funding. Mr. Hazard noted that this could include a contingency amount being included in the budget.

Vice Mayor Kirk noted that she was happy to have Councilmember Miller on the committee. She suggested the need to look at the square footages and to determine how much the rent should be. Ms. Kirk noted the need to do a lot of work. She advised that they would get the checks out before the end of the month and would report back to the Council in January.

Councilmember Snyder noted that the donations would be limited to the organizations that were on the list.

Council Approval – Town’s Financial Policies

Vice Mayor Kirk moved, seconded by Councilmember Snyder, that Council adopt the Financial Management Policies dated November 1, 2016 as presented.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder
No – N/A
Abstain: N/A
Absent: Councilmember Littleton
(Mayor Davis only votes in the case of a tie.)

Council Approval – Ordinance Pertaining to the Storage of Substances with Maximum Contamination Levels (MCL) in Drinking Water & Reporting of Spills

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council adopt Town Code Section 113, Article V, pertaining to the storage of any substance with a maximum contamination level in drinking water and the reporting of spillage of those items.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder
No – N/A
Abstain: N/A
Absent: Councilmember Littleton
(Mayor Davis only votes in the case of a tie.)

Council Appointments – Middleburg Arts Council & Board of Zoning Appeals

Councilmember Daly moved, seconded by Vice Mayor Kirk, that Council appoint Debbie Cadenas to the Middleburg Arts Council to fill an unexpired term, said term to expire June 14, 2018. Councilmember Daly further moved, seconded by Vice Mayor Kirk, that Council recommend to the Judge of the Loudoun County Circuit Court the appointment of Terence Cooke to the Middleburg Board of Zoning Appeals for a five-year term, said term to expire December 31, 2021.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder
No – N/A
Abstain: N/A
Absent: Councilmember Littleton
(Mayor Davis only votes in the case of a tie.)

Discussion Items

Draft Ordinance to Amend Parking Ordinance

Town Clerk North reported that the staff revised the amendments to the parking ordinance and was recommending the adoption of the ordinance, without the fee increases, which was a separate item for discussion. She reminded Council that these amendments would remove the references to parking meters and would insert references to timed parking. Ms. North advised that rather than listing each of the parking spaces that would be identified as three hour, eight hour and fifteen minute spaces, the ordinance would authorize those zones, with the Town Administrator being authorized to approve and sign the individual spaces. She reminded Council that during the last meeting, they discussed not addressing eight hour parking; however, she explained that there was concern that commuters would then park in the spaces. Ms. North advised that the staff included an eight hour zone in the ordinance so that if this problem occurred, the Town Administrator could sign the spaces. She noted that if it was not a problem, nothing would happen. Ms. North reiterated that the staff believed this would be a problem in the future; therefore, including the provisions in this ordinance would allow it to be addressed immediately without the need for a third ordinance amendment.

Mayor Davis summarized that the amendments before the Council made changes related to the parking meters but did not change the fee amounts. Town Clerk North confirmed the fee increases would be handled as a separate amendment.

Councilmember Leonard-Morgan noted that Section 89-16 talked about the parking being enforced from 7:00 a.m. to 7:00 p.m.; however, it also talked about eight hour parking. Town Clerk North explained that an individual would not be allowed to park in a space for more than eight hours within that twelve hour period. She advised that the Police Department would check on parking between those hours.

Councilmember Snyder moved, seconded by Councilmember Daly, that the Council adopt AN ORDINANCE TO AMEND TOWN CODE CHAPTER 89 PERTAINING TO STOPPING, STANDING AND PARKING.

Town Administrator Semmes noted that she would be responsible for approving the timed parking limits for different areas. She opined that the only thing that would change would be the addition of fifteen minute parking/loading zones and noted that she added one on North Madison Street, in front of the Pink Box. Ms. Semmes opined that this would be helpful for those coming into the Visitors Center and noted that realtors were currently parking there.

Councilmember Snyder asked that the staff replace the ten minute parking sign in front of the Town Office with a fifteen minute sign.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

(Mayor Davis only votes in the case of a tie.)

Town Clerk North reminded Council that if they wanted to increase the existing fines and impose incremental fines for repeat offenders, the ordinance needed to be amended again, following a public hearing. She noted that she provided a second chart that contained the \$50 and \$100 fines that the Council previously discussed. Ms. North further noted that she added a column for fines for repeat offenders, as discussed during the last meeting, and proposed that those fines be \$100 if paid within seven days and \$200 if paid after seven days. She questioned whether the Council would like to discuss this during this meeting or whether they wanted to wait and do so in January. Ms. North reminded Council that if they waited until January, the public hearing could not be held until February.

Town Clerk North summarized, based on past Council discussions, that if an individual received a ticket, the fine would be \$50 if paid within the first seven days and \$100 if paid after seven days. She advised that if not paid within forty-five days, she would go into the DMV records and place a stop record order on the vehicle. Ms. North reminded Council that they also wanted higher fines for someone who was a repeat offender that had outstanding parking tickets. She reiterated that in that case, the staff proposed that the fine be \$100 if paid within seven days and \$200 if paid after seven days. Ms. North questioned whether those amounts were acceptable to the Council. She advised that after forty-five days, if the ticket remained unpaid, a stop record order would be placed on the vehicle through the DMV.

Chief Panebianco questioned, given that there would be escalating fees for repeat offenders, whether the Council would be interested in leaving the initial fine at \$30. He suggested the fines escalate for repeat offenders or if the tickets remained unpaid. Chief Panebianco expressed fear that the police officers would have to listen to complaints. Chief Panebianco further expressed fear that a one-time visitor may be upset if they received a \$50 ticket. He reiterated his suggestion that the first one be \$30, with the second being the higher amount. He advised that the technology the staff was reviewing was able to handle that. Chief Panebianco opined that because Middleburg was a shopping community/tourist destination, it may be better to leave the initial fine where it currently stood and to charge repeat offenders, who were causing the issues, the higher amounts.

Mayor Davis noted that in that case, the offender would not be able to say "I did not know".

Councilmember Snyder advised that he wanted to be friendly to visitors. He noted that he received a fine for \$75 in California even though he was only five minutes over.

Chief Panebianco advised that when the meters were removed, he was asked whether the Town would try to make up for the lost revenue. He opined that this was not the image that Middleburg wanted to project.

Councilmember Snyder noted that this was not the intent of the fines. Councilmember Daly opined that this was the perception. Councilmember Miller suggested that lost revenue was a red herring as there was no revenue. Councilmember Daly noted that people did not know that.

Town Clerk North suggested the police officers give a warning to any first time offenders who were not in the system. Councilmember Miller noted that the offender would have the opportunity to contest the ticket. Chief Panebianco advised Council that he was fine with whatever decision the Council made. He explained that because he saw the pulse of the community, he thought it would be better to leave the initial fine at \$30 and increase it for second offenses. Chief Panebianco suggested the Town would be in a better light in the first time visitors' eyes.

Councilmember Hazard suggested the police officers just give a warning in those cases. Chief Panebianco advised that the officers could give a warning for every first time violation. He explained that he felt he needed to say something. Chief Panebianco confirmed they could do a warning for a first offense.

Mayor Davis suggested that once in place, it would be great if the officers could go into the businesses with a flyer to describe the changes. Chief Panebianco confirmed they would. He advised that they would do a strong public education before doing enforcement. Chief Panebianco explained that he did not want the perception to be that the Town's fines were high and noted that Middleburg would be among the highest.

Councilmembers Kirk and Daly noted that they were fine with the initial fine remaining at \$30.

Chief Panebianco advised that he was okay with the fine increasing if not paid within the seven days.

Councilmember Leonard-Morgan advised that he liked the idea that motorists would get a warning first.

Councilmember Snyder reminded Council that they were just trying to get the parking spaces to turn over.

Mayor Davis suggested that if they received a warning, they would know this. Councilmember Hazard advised that he liked the idea of giving warnings for first time offenders.

Chief Panebianco advised that he was fine giving a warning for every first offense. He reiterated that he felt he needed to raise the concerns about the increased fees as he had heard some negativity about that. Chief Panebianco advised that he was not sure the word about the increase was really out among the public.

Councilmember Leonard-Morgan suggested the new technology would make it easier for the officers to know whether someone was a repeat offender. Chief Panebianco advised that his understanding was the technology would identify whether someone was a repeat offender and would automatically charge them a higher fine. He noted that he was not sure it would show whether the person had received a warning.

Town Administrator Semmes opined that the officer would not put the warning into the system. Chief Panebianco confirmed they would issue a warning ticket. He advised that until he met with the vendor, he was not sure whether the system would show that they had been issued a warning. Town Clerk North advised that it was her impression, based on the responses received, that the system would show when a warning had been issued, as long as it had been entered into the system.

Councilmember Miller opined that if vehicle information was entered into the system, it would populate the system.

Town Clerk North reiterated the need to be careful about the software that was selected so the Town could make sure it would do everything it needed it to do.

Mayor Davis noted that the Council would still need to hold a public hearing due to the incremental fines. She reminded Council of the need to decide on those amounts.

Vice Mayor Kirk advised that she was okay with the fines as proposed.

Town Attorney Plowman asked the Town Clerk to change the title of the last column from “repeat offenders” to “those with existing outstanding tickets”. Town Clerk North noted the need to amend the ordinance itself to address this situation.

Chief Panebianco questioned whether the Council desired to charge the accelerated fine every time someone received a subsequent ticket or whether they only wanted to do so if they had an outstanding ticket. Town Clerk North reminded Council that the last time they discussed this issue, they expressed a desire that the increased fine only apply in cases in which someone had an outstanding ticket.

Chief Panebianco advised that his problem was that if the repeat offender could continue to pay tickets at a lower fine amount, they would continue to be a repeat offender. He further advised that he would prefer from an enforcement standpoint that a second offense be at an accelerated rate. Chief Panebianco noted that he did not care about the money, but rather, he only cared about moving the cars along. He suggested that if that was the purpose, whether they had an outstanding bill would not matter as they would not have one after forty-five days. Chief Panebianco recommended the fines double for a second fine and triple for a third one.

Town Attorney Plowman noted the need to define what a “repeat offender” was. She questioned whether they were a repeat offender if they received a ticket in 2015 and a second one in 2016. Town Clerk North reiterated the need to add additional language to the Town Code to address this.

Councilmember Snyder suggested this item be brought back to the Council for further discussion in January as he did not believe it could be resolved at this time. He noted that the fine was a deterrent to keeping a parking space for a long period of time. Mr. Snyder suggested the Council keep that in mind when determining the fine amounts.

Councilmember Miller noted that the Council wanted to send a strong message because it was moving to free parking.

Chief Panebianco opined that if someone received a ticket that cost \$30, a second one that cost \$60 and a third or more that cost \$90-\$100, they would get the message and start moving the car.

Councilmember Hazard noted that the Town would have the increased fines, as well as the DMV component, to encourage people to turn over the spaces. He opined that the Town would not have outstanding citations as they would be taken care of through the DMV. Mr. Hazard suggested the parking fines be kept separate from the DMV process. Chief Panebianco agreed. He advised that the penalty for not paying was the DMV process, whereas the penalty for continuing to park was a higher fee.

Town Clerk North reminded Council that the DMV process may not work until a year later. She noted that if the individual had just renewed their license plates, they may get tickets for a year before they went to the DMV to try to renew their plates.

Vice Mayor Kirk questioned whether the Chief was talking about the same people. Chief Panebianco opined that this involved approximately eight to ten people. He further opined that once the Town started ticketing folks, they would start moving their vehicles, even if it was only by one space. Chief Panebianco suggested that if the Town found that was not enough, it could always try something else. He advised that he did not want to damage Middleburg.

Councilmember Snyder advised that he would like to start the fines with a small amount and see if the enforcement worked.

Council held some discussion as to what the fine amounts should be. They decided to think about it and to continue this discussion during their January work session. It was noted that, in that case, the public hearing would not be able to be held until February.

Vice Mayor Kirk noted that a car was parked blocking an alley earlier in the week. She advised that even if the police officer issued a ticket, it would not help those trying to get down the alley. Chief Panebianco reported that the Police Department had the ability to tow a vehicle that was causing a hazard or blocking private property. He noted that they usually did not as there were only so many places for the vehicles to go and instead made an effort to find the driver.

Vice Mayor Kirk questioned whether there were any plans to paint yellow lines at locations where parking was prohibited. Chief Panebianco confirmed they would; however, he was not sure about painting on the granite curbs. Town Administrator Semmes advised that the granite curbs did not need to be painted as they were only located on the bump-outs. She noted that the locations that were usually painted yellow needed to be re-painted.

Chief Panebianco suggested that for the bump-outs, the Town place a triangle at those locations that contained a “no parking” message. He recommended this be addressed at the staff level. Chief Panebianco advised that there was a space on Madison Street that needed to be identified as a no parking area and noted that while you could park a car there, it was too close to the intersection and a fire hydrant.

Town Clerk North asked that the members of Council also think about whether the other fines needed to change. She noted that this was for the discussion next month. Ms. North suggested that if they needed to be increased, they should be addressed at the same time as the parking fines.

Process for advertising & appointment board/commission members & redacting names

Town Clerk North advised Council that the Town had begun to experience problems in recruiting people to serve on its board/commissions/committees. She noted that this was not the case when she first came to work for the Town. Ms. North advised that it had become more difficult the last couple of years; however, she had really noticed it this year. She reminded Council that she had been advertising the Planning Commission vacancy since April and had spent more than \$1,000 on ads, with not a single application being received until earlier in the day. Ms. North reminded Council that in addition to the advertisements, the vacancies were included in the Friday E-Mail Blasts and

the Council and board/commission was notified with a request to encourage people to apply. She reported that the Middleburg Arts Council was great about finding people to serve. Ms. North reminded Council that the Town had made it more difficult for people to apply. She explained that originally they were simply asked to provide a letter of interest; then, they were asked to provide a letter of interest and a resume; and, now they were asked to provide a letter of interest, a resume and an explanation of why they wanted to serve. Ms. North reminded Council that these were volunteers and suggested the Town was now asking them to do too much for a volunteer position. She questioned whether the Council had any thoughts on this matter.

Councilmember Snyder advised that he was willing to request a letter of interest and opined that a resume was usually not required. He noted that most people who joined something like the Planning Commission did not have any experience and opined that, if they did, they would mention it in the letter of interest.

Town Clerk North reminded Council that if they wanted to do so, they could always bring applicants into a closed session for an interview to find out more about them.

Vice Mayor Kirk agreed that the applicants only needed to send a letter of interest. She suggested, however, that a one line letter was not enough.

Councilmember Daly noted that the members of Council were not required to submit a resume when they were seeking office. He opined that they should not ask someone who was volunteering to serve on a committee to do something the Council did not have to do.

Councilmember Hazard agreed. He opined that the Council needed to do a better job of encouraging people to apply. Mr. Hazard reported that he just had someone apply for the Planning Commission and was considering another person. He suggested that if the Town had committee vacancies, the members of Council needed to talk to people and let them know the Town needed their help.

Town Clerk North advised that sometimes all that it took was for someone to approach them.

Vice Mayor Kirk reported that she had approached a lot of people; however, they all declined.

Councilmember Snyder advised that he liked to know where people lived. He noted that he did not need to have their exact address; however, he would like to have a street name and know whether they lived in town.

Town Planner Moore noted that the Council needed to know where people lived for some of the vacancies and reminded them that the Planning Commission members needed to be residents of the town.

Councilmember Snyder advised that even if residency was not a requirement, he would like to know whether an applicant lived in the town. He suggested that if the Council did not require resumes, it would receive fewer addresses. Mr. Snyder recommended the Town ask for their address.

Town Clerk North advised Council that there were two ways to address this. She suggested that the first was that when an application was brought to the Council, it could be done in closed session, which would allow the letter of interest/resume, with the entire address, to be provided as a part of the closed session materials.

Councilmember Snyder advised that he would hesitate to do anything that would require additional closed sessions and opined that the Council was holding too many.

Councilmember Miller advised that he was all for an individual's right to privacy. He noted that Councilmember Snyder has championed protection of private information in the computer system in the past. Mr. Miller advised that he did not look at this any differently.

Councilmember Snyder advised that he was satisfied just to know the street name and whether they lived in Middleburg.

Town Attorney Plowman advised Council that the reason she recommended it be redacted was that these were personnel records, based on FOIA Advisory Council and Attorney General opinions, which applied to appointments to boards/commissions. She reiterated that they were personnel records that were exempt from FOIA. Ms. Plowman advised, at some point, the agenda may be put on the Town's website and noted that this would put personnel information out for an individual who may or may not be appointed. She suggested that if the members of Council said "they did not care if their information was put out to the public", this was their choice. Ms. Plowman further suggested the Town could ask someone whether they cared if their contact information was put out to the public.

Councilmember Snyder advised that he only cared whether they were a resident and, if so, in what part of town did they reside.

Councilmember Miller opined that the Council did not need to know where they lived as long as they indicated whether they were a resident or non-resident.

Councilmember Snyder advised that there were some cases where he would like to make sure there was a balance in town.

Councilmember Miller suggested the form contain a check box for residents and non-residents. Town Clerk North noted that the Town did not have application forms at this point. She advised that this was always an option. Council agreed it did not want an application form.

Councilmember Snyder advised that he would like for the Town to ask for a letter of interest and whether they lived in town and, if so, what part of town. He noted that this would not include an address.

Councilmember Hazard suggested there was no need to balance members from the different parts of town. He noted that the whole reason the Council was having this discussion was that there were no applicants.

Councilmember Snyder advised that there have been times when the Council had multiple applicants for a position. He suggested that, in those cases, it would be nice to know what part of town they were from.

Councilmember Miller suggested this was not a way to appoint people.

Mayor Davis suggested that if someone applied, someone associated with the Town would know that person. She further suggested that if no one knew them, the Council needed to have more information about them.

Councilmember Snyder reminded Council that the reason they were in this predicament was that they were asking for resumes. He noted that resumes typically contained an address. Mr. Snyder opined that the Town did not need resumes.

Mayor Davis questioned, if no one knew the individual, how the Council knew the person was capable of holding the position. She noted that people were being vetted across the country for positions and suggested the need to know whether they were a felon. Ms. Davis questioned whether the Council should appoint someone who sent in a letter, which indicated they were a resident, if no one knew who they were.

Vice Mayor Kirk suggested the Council needed to apply common sense. She further suggested that if no one knew them, the members needed to ask the staff if they knew them. Ms. Kirk noted that the staff could always look up their water account information.

Councilmember Hazard reminded Council that some committees did not have a residency requirement. He noted that Councilmember Snyder's point was that the Town did not want someone living in another area to apply for a Town board/commission. Councilmember Snyder opined that they would not show up for the meetings. Town Clerk North reminded Council that they did appoint someone from Charlottesville to Go Green. She advised that he attended the meetings for about a year and then resigned.

Councilmember Leonard-Morgan suggested that Council could have people apply with minimal information and, if they liked them, could find out more about them.

Town Clerk North recommended that if the Council did not know the individual, they may want to interview them just to make sure they were a good fit with the Planning Commission or whatever committee they were applying for.

Vice Mayor Kirk questioned whether the Town Clerk had received any applications that included no information. She opined that the staff knew most of the people as this was a small town. Ms. Kirk questioned whether the Town Clerk had ever received a letter that was so brief that she felt more information was needed. Town Clerk North confirmed that she had received letters that simply stated the individual was interesting in serving on xxx committee. She opined that the letters almost always contained their address and phone number; however, as far as information on their background, there have been cases where that was not provided.

Town Planner Moore opined that providing an address was not deterring anyone from applying for a position. He suggested that requiring a letter of interest, resume and explanation of why they wanted to serve may be. Mr. Moore reiterated that he did not believe people were deterred from applying because they had to give their address. He noted that the issue of the address came about because they were redacted in the packets that were handed to the Council. Mr. Moore opined that there was a way to deal with that. He suggested it could be redacted in the public copies of the agenda but included in the Councilmember's packet and labeled as being not for disclosure.

Town Clerk North advised that, under the State Code, she had to have a public copy of the agenda packet available that was the same as the packet that was distributed to the Council, when it was distributed to the Council, minus any closed session items.

Councilmember Snyder questioned whether the address could be redacted from the public copy.

Town Attorney Plowman noted that it was exempt under FOIA. She advised that if they asked for the information, the Town did not have to provide it. Ms. Plowman suggested it be redacted and noted that nothing would prevent the Council from asking where the individual lived if a member wanted to know. She advised that the other option was to call the individual and ask whether they cared if their address, phone number and email were put in a public document.

Town Clerk North noted that Debbie Cadenas, who applied for the seat on the Arts Council, was listed in the phone book and advised that she could easily find the information. She noted that Mr. Cooke's was not listed in the phone book so she redacted his information. Town Attorney Plowman suggested this not be the test. She noted that people were constantly showing up on websites even though they asked it to be removed. Ms. Plowman advised that if it eventually went on the Town's website, it would be in a database and would be subject to hackers.

Mayor Davis questioned what the Council wished to do. She further questioned whether it only wanted to ask for a letter of interest. The members of Council agreed they did. Vice Mayor Kirk suggested that if more information was needed, the Council could always seek it. She recommended the information be redacted from agenda packets, with the members contacting the staff for the address if a member wanted that information.

Councilmember Hazard suggested the Council not bring only some people in for an interview. He further suggested that everyone be brought in. Mayor Davis questioned why the Council would not bring everyone in.

Councilmember Hazard advised that he was getting the sense that if the Council needed more information, it would only bring in some people. He suggested that everyone be brought in for an interview. Vice Mayor Kirk agreed.

Councilmember Snyder advised that he would like to redact the information from the public packets but not the Council's. Town Clerk North noted that if the Council brought everyone in for an interview as suggested by Councilmember Hazard, the letters would be back-up materials for a closed session; therefore, it would not need to be redacted or disclosed.

Councilmember Snyder suggested it was worth the effort to check and see if it was possible to redact some information from the public agenda packet.

Vice Mayor Kirk noted that this was not possible. She suggested the applicants be notified through the advertisement that their information, including address, would be released to the public and the Town Council unless otherwise requested. Town Attorney Plowman confirmed the Council could put the burden on the applicant to ask that their information not be disclosed.

Town Clerk North questioned whether the Council wished to interview all of the applicants. Councilmembers Kirk and Snyder advised that they did not. Councilmember Hazard noted that, in that case, they would not interview anyone. Councilmember Leonard-Morgan noted that he interviewed with the Council for the vacant position and advised that he wanted to do so.

Councilmember Snyder advised that this was done for the Council seats; however, the Council did not normally do so for committee vacancies. He noted that they have interviewed candidates for the Planning Commission in the past; however, this was when they had more applicants.

Vice Mayor Kirk noted that the Council had not had a lot of applicants lately. She further noted that at that time, they wanted to pick the best applicant for the seat.

Councilmember Hazard suggested that some of the committees policed themselves. Town Clerk North advised that the Middleburg Arts Council was good about getting people to apply. She further advised that there have been vacancies on Go Green for over a year now; however, no one was applying.

Mayor Davis suggested that if more than one candidate was interested in a seat, they should all be brought in for an interview. She noted that even if the Council knew the applicants, it was important to know why they wanted to serve.

Councilmember Snyder suggested that if the interviews were brief and general, they did not need to occur within a closed session. Mayor Davis opined that they did. Town Clerk North reminded Council that if done in open session, the individual(s) not appointed may be embarrassed and may decline to seek appointment to anything in the future. Vice Mayor Kirk noted that the Council was trying to protect people.

Town Attorney Plowman suggested this could always be a closed session. She further suggested that if there were multiple applicants, they could bring them in for an interview. Ms. Plowman noted that if there was only one applicant, the Council could review the letter of interest in closed session as a formality, then come out of the closed session and make the appointment.

Councilmember Hazard noted that the Town had received an application for one of the Planning Commission vacancies. He questioned whether it should be taken to the Planning Commission for their recommendation before coming to the Council. Mr. Hazard suggested the need to make sure there were qualified people serving.

Vice Mayor Kirk questioned whether the Planning Commission would like to do so. She recommended it be handled on a case-by-case basis.

Councilmember Hazard suggested the Council did not want to appoint incompetent people.

Councilmember Snyder asked that if this was done, the Planning Commission advise Council on their criteria for competency and any other evaluation criteria used.

Councilmember Hazard suggested the Council not go there. He opined that most of the boards/commissions policed themselves. Mr. Hazard recommended applications be sent to the board/commission for their review and recommendation. He opined that this was not difficult and suggested it would help keep competency on the board.

Councilmember Snyder recommended this was appropriate only if there was more than one applicant. He opined that doing so would only add another month to the appointment process.

Vice Mayor Kirk noted that the Planning Commission met regularly. She suggested it would be nice to have the applicant meet with the body.

Councilmember Hazard noted that Mr. Cooke did so when he applied for the position and opined that this was nice. He advised that as to the current applicant for the Planning Commission, he knew the person and knew they were capable. Mr. Hazard suggested that as a general rule, the individual should be vetted.

Councilmember Snyder suggested that if the applicant was willing to do an interview, this was fine; however, if the need to fill the seat was pressing, it should not be done.

Councilmember Hazard disagreed. He opined that the Council needed to have capable people on the boards/committees, especially the Planning Commission.

Mayor Davis summarized that the Council wished to have individuals submit a letter of interest and to have the committee vet the individual(s) and make a recommendation to the Council.

Town Administrator Semmes recommended this process not be followed for the Board of Zoning Appeals. Council noted that the BZA was appointed by the Circuit Court, following their recommendation.

Councilmember Snyder asked that the Council be provided with a list of committees so it could determine whether this process was appropriate.

Councilmembers Leonard-Morgan and Hazard noted the need to make sure the Council was appointing individuals who were not felons.

Mayor Davis summarized that the application for the Planning Commission would be sent to them for their review and recommendation to the Council.

Draft Tourism Zone Ordinance

Vincent Bataoel, Chairman of the Economic Development Advisory Committee (EDAC), advised that given the current and future vacancies in town, especially the Home Farm and French Hound spaces, EDAC was looking for ways to incentivize new businesses to locate in Middleburg. He explained that they were recommending the adoption of a tourism zone ordinance that would offer incentives to businesses that may wish to locate here.

Councilmember Snyder questioned whether the incentives would be offered for an initial period of time to allow new businesses to get established. He further questioned whether they would apply to chain stores or existing businesses.

Mr. Bataoel recommended that if the Council agreed with the ordinance, EDAC would then make recommendations on the specifics.

Mayor Davis noted that Warrenton and Fredericksburg had tourism zones. She suggested that Middleburg could offer whatever incentives it wanted.

Councilmember Snyder opined that this was an intriguing idea given the number of vacant properties. He noted that he would like to encourage businesses to move into the town; however, he suggested the need to be careful about what was brought in. Mr. Snyder opined that the Town wanted “local” businesses.

Mayor Davis noted that the zoning ordinance identified what was allowed. She advised that this would be an incentive program, such as tax incentives or whatever the Council agreed to offer.

Councilmember Leonard-Morgan noted that there were examples of how this could affect current businesses, as well as incentives that could be applied. He further noted that he liked some of the ideas. Mr. Leonard-Morgan suggested this would give a business a boost in the beginning; however, he noted the need to make sure it was the kind of businesses the Town wanted.

Councilmember Miller explained that the intent was to help the current business atmosphere and to continue to keep the businesses local. Councilmember Snyder reiterated the need to be careful in how the program was done so the Town would get the businesses it wanted.

Vice Mayor Kirk noted the need for businesses as the Town had a lot of empty storefronts.

Councilmember Hazard questioned whether the Council wanted to see more information. He agreed this was an interesting concept; however, he suggested the Council did not need to adopt it during this meeting.

Councilmember Miller suggested the Council adopt the simple legislation that would create the zone, with any incentives being approved by the Council. He opined that this would empower EDAC and the Town Administrator to begin conversations. Mr. Miller reiterated the need for any incentives to be approved by the Council. He advised that this would allow EDAC to find out what incentives would be needed to entice businesses to come to Middleburg or, for those businesses that were leaving, allow them to stay. Mr. Miller noted that he was in favor of discussing enabling legislation in the short term so the Town would have some tools in its toolbox. He reminded Council of the RFP for an economic development plan that was on the horizon and suggested this would provide more information for writing a specific tourism ordinance.

Councilmember Hazard opined that adopting the simple legislation would not help as the specifics would still have to return to the Council for approval. He questioned how this would help. Councilmember Miller opined that EDAC could not have a conversation without a tourism zone. He noted that approval of the ordinance would not empower the Town to offer any incentives.

Councilmember Hazard questioned whether it was correct that the Town could not offer incentives without a zone. Town Administrator Semmes read a portion of the ordinance and opined that it would give the Town the opportunity to negotiate with a business and bring a proposal back to the Council.

Councilmember Snyder noted that most communities made the entire town a tourism zone. He questioned whether EDAC would like to make Middleburg’s entire commercial district a tourism zone. Town Administrator Semmes confirmed this was what was proposed.

Mayor Davis questioned whether the Council must show agreement that it would like to do this. Vice Mayor Kirk suggested the need to support a tourism zone so EDAC could reach out to the businesses.

Councilmember Hazard questioned whether EDAC needed to have the ordinance in order to offer incentives. He noted that even if the Council adopted the ordinance establishing the zone, the incentives would still have to come back to the Council. Mr. Hazard advised that he did not understand how setting up the zone helped. He questioned whether it would provide protection to EDAC.

Mr. Bataoel explained that it would communicate to EDAC that this was something the Council was interested in and would allow them to reach out to the businesses that may be interested in locating in Middleburg to say enabling legislation was in place and incentives may be offered in the future.

Town Attorney Plowman explained that this was a way to provide tourism incentives if the Council wished to do so.

Mayor Davis questioned whether the Council was willing to do this rather than bringing in more offices. She opined that the town was full of offices.

Councilmember Miller advised that a tourism zone would not affect offices, but rather would guide tourism.

Councilmember Hazard questioned how it would help market the town. Town Administrator Semmes expressed hope that the County would help the Town spread the word about the vacancies. She noted that members of EDAC were reaching out to businesses that may be interested in coming to Middleburg.

Mayor Davis noted that she heard a rumor that a burger place wanted to go into the Home Farm space; however, the rent was too high. She questioned whether anyone knew anything about that.

Economic Development Coordinator Pearson reported that some members of EDAC were speaking to someone who owned a restaurant. She advised that he said “they wanted too much rent”; however, she did not know who he was.

Councilmember Daly opined that this was worth exploring if it would help bring in new businesses. He noted that the Council would only be setting up another tool. Councilmember Miller confirmed it would provide a tool. He opined that it would not have a negative effect. Councilmember Snyder opined that setting up the zone had no up or down side and was just a zone.

Councilmember Snyder moved, seconded by Councilmember Leonard-Morgan, that Council adopt CHAPTER 40, ECONOMIC DEVELOPMENT DISTRICTS, ARTICLE 1, TOURISM ZONE as recommended by the Economic Development Advisory Committee that included pages one and two.

Councilmember Hazard questioned whether this would preclude the area from also being an enterprise zone. He further questioned why this was important enough to say it in the State Code. Town Administrator Semmes explained that this was a State Code provision. She advised that the Town would not qualify for a federal enterprise zone as it was for distressed areas.

Town Attorney Plowman questioned the definition of a “qualified tourism business”. She noted that the longer ordinance referenced Section 40-5, which detailed it more. Ms. Plowman advised that there was still a definition under Section 40.2 that referred to the tourism zone program adopted by resolution of the Council. She questioned whether this would be on a case-by-case basis. Ms. Plowman further questioned how the Town would determine what a qualified tourism business was. She reiterated her question as to whether this would be determined on a case-by-case basis. Town Administrator Semmes reported that fleshing out who would qualify would be decided later.

Town Attorney Plowman advised Council that by adopting this ordinance during this meeting, they have done nothing. Vice Mayor Kirk opined that it would show the Town’s interest in working with businesses. Town Administrator Semmes opined that it would allow EDAC to talk about the incentives that would make a difference.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

(Mayor Davis only votes in the case of a tie.)

Draft Water Ordinance pertaining to out-of-town connections

Town Administrator Semmes reminded Council that after they adopted the water ordinance amendment to match the sewer ordinance related to the administrative approval of 5/8 inch connections, Councilmember Snyder advised that he wanted to make sure that in doing so, they had not given the Town Administrator the authority to approve taps that were outside of the town limits.

Councilmember Snyder noted that he also did not want to have outside applicants challenge the Town. He reminded Council that the policy was that the Town did not extend utilities outside of the town limits other than the existing extensions, which were grandfathered. Mr. Snyder noted that he wanted to make sure this was clear so the Council would not give someone ammunition to attack the Town. Town Administrator Semmes confirmed the proposed language would address this.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council adopt AN ORDINANCE TO AMEND TOWN CODE SECTION 113-5 PERTAINING TO WATER CONNECTIONS.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

(Mayor Davis only votes in the case of a tie.)

Boy Scout Project

Scout Bassinger explained that they were present to earn a merit badge and advised that they were supposed to choose an issue that was relevant in the community. He advised that they chose Locust Street, where he lived, as it was not paved very well and contained a number of potholes. Mr. Bassinger questioned whether the Council was able to do something about this, whether they were already doing anything and what he could do to help.

Councilmember Snyder explained that VDOT owned the roads; therefore, the Town must work with them. He advised that the Town Administrator was pressing VDOT to make progress in addressing this issue. Mr. Snyder noted that as to what the Boy Scouts could do to help, he would suggest Scout Bassinger put together a report highlighting the problems on the residential streets as he saw them and provide a copy to the Town.

Councilmember Hazard noted that he could also write a letter to VDOT as a project and opined that it would mean more if it came from the Boy Scouts. He suggested they also send photographs.

Town Administrator Semmes advised that VDOT was supposed to come to town next week to fix some potholes; however, she did not know how many would be fixed. She advised that she would make sure they knew about Locust Street and noted that Mr. Bassinger was not the first person to complain about it.

Members of Council suggested that Scout Bassinger send the letter to VDOT and copy the Town and the press.

Mayor Davis reported that the Town had been working with VDOT for some time on this issue, particularly on Locust Street. She confirmed that VDOT was aware of it and reported that it was on their Six-Year Plan. Ms. Davis advised that it was to come forward next year. She noted that the Town had been trying to get the roads paved in the Ridgeview area for a long time and reported that VDOT promised this would be done next year. Ms. Davis opined that it was important that the Scouts write to VDOT to let them know of their concerns.

Virginia Municipal League’s Legislative Priorities

Mayor Davis noted that Delegate Minchew was unable to attend the meeting as he was stuck in traffic.

Town Administrator Semmes reminded Council that the last couple of years, the staff brought legislation of interest forward for their review. She encouraged the new members to get on the list to receive the VML legislative alerts and bulletins. Ms. Semmes reported that if something of interest came up, she would make the Council aware of it. She advised that the next time the Council could discuss this issue was in January and suggested she highlight some items at that time. Ms. Semmes reported that she would talk with Delegate Minchew in the interim about items that he felt the Town should follow. Mayor Davis agreed the Council should discuss this item in January,

Information Items

Mayor Davis reminded Council of the Christmas party scheduled for December 16th.

Closed Session – Award of Public Contract and Actual Litigation

Vice Mayor Kirk moved, seconded by Councilmember Hazard, that Council go into closed session as allowed under the Virginia Freedom of Information Act Sections 2.2-3711(A)(29) and (7) for discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body and for consultation with legal counsel and briefings by staff members pertaining to actual litigation, where such consultation or briefing in open session would adversely affect the litigating posture of the public body. Vice Mayor Kirk further moved, seconded by Councilmember Hazard, that these matters be limited to (1) the award of a contract for consulting services for the Comprehensive Plan and (2) consultation with legal counsel regarding Charter Technologies vs. Town of Middleburg. Vice Mayor Kirk further moved, seconded by Councilmember Hazard, that in addition to the Council, the following individuals be present during the closed session: Martha Mason Semmes, Angie Plowman and Will Moore for the first part and Martha Mason Semmes and Angie Plowman for the second part. Vice Mayor Kirk further moved, seconded by Councilmember Hazard, that the Council thereafter reconvene in open session for action as appropriate.

Vote: Yes – Councilmembers Kirk, Hazard, Daly, Leonard-Morgan, Miller and Snyder

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

(Mayor Davis only votes in the case of a tie.)

Mayor Davis 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.

There being no further business, Mayor Davis declared the meeting adjourned at 9:52 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk