



**MIDDLEBURG TOWN COUNCIL
REGULAR WORK SESSION
MINUTES**



Thursday, September 22, 2016

PRESENT: Vice Mayor Darlene Kirk
Councilmember J. Kevin Daly
Councilmember Kevin Hazard
Councilmember Trowbridge "Bridge" Littleton
Councilmember Philip Miller
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
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, September 22, 2016 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.

Council Approval – Appointment – Economic Development Advisory Committee

Councilmember Miller questioned how the process worked and noted that the last applicant had to go to the Committee, who then nominated that person. He noted that this process did not happen here.

Economic Development Coordinator Pearson explained that it happened a while ago when it was approved that someone from the Middleburg Business & Professional Association (MBPA) would serve on the Committee. She noted that the Town just needed the name.

Councilmember Snyder noted that appointments could not always go in front of the Committee. He agreed it was nice to do so; however, he opined that some vacancies have occurred for too long. Mr. Snyder noted that the Town currently had three vacancies on committees, with no applicants.

Councilmember Shea questioned, if the Council was accepting this person as a representative of the MBPA, whether it needed to approve that person. She suggested that once the Council approved having the position on the Committee, the MBPA could just make the appointment.

Town Clerk North explained that under the Committee's bylaws, which were approved by the Council, the appointment must come to the Council.

Councilmember Shea questioned whether the Council wanted to leave the process that way.

Councilmember Snyder opined that it was wise to do so in case someone was recommended who was not appropriate for the Committee.

Councilmember Shea noted that this was a person who was chosen by the MBPA. She further noted that they had a limited population from which to choose. Ms. Shea questioned whether there needed to be a second approval.

Vice Mayor Kirk noted that this appointment must be approved as it was required in the by-laws.

Councilmember Shea suggested that who the MBPA chose as their representative was their business. She further suggested the appointment be approved this time but, in the future, it should be a MBPA Board decision as to who they wanted to serve.

Councilmember Miller questioned whether this would require a change to the bylaws. Town Clerk North confirmed it would.

Councilmember Snyder opined that it was inappropriate to allow another body to appoint someone to a Town committee. He further opined that the Council needed to approve the appointment. Councilmembers Miller and Hazard agreed.

Councilmember Miller opined that, in fairness to the other Committee members who went through the nomination process, this appointment should have to go through EDAC as well. He suggested the MBPA should explain why they chose that person.

Councilmember Shea disagreed and noted that there would not be more than one applicant from this group.

Councilmember Littleton likened this process to one in which the Senate made an appointment. He noted that in that case another body had already recommended the candidate. Mr. Littleton questioned why the Council would allow the MBPA to choose someone if the Council wanted to get into the business of vetting the candidates. He suggested that if this was their representative, they should figure out who that should be. Mr. Littleton opined that it was the Council's job to confirm the appointment or to tell them to pick another person.

Councilmember Snyder opined that it would be rare for that to happen; however, he suggested the Council should reserve the option to do so. He opined that, in most cases, their recommendation should be a slam dunk.

Councilmember Snyder moved, seconded by Councilmember Daly, that Council appoint Melanie Mathewes as the Middleburg Business & Professional Association representative to the Economic Development Advisory Committee.

Councilmember Snyder inquired as to when this term would expire. Town Clerk North advised that it would run concurrent with her term on the MBPA Board.

Vote: Yes – Councilmembers Kirk, Daly, Hazard, Littleton, Miller, Shea and Snyder

No – N/A

Abstain: N/A

Absent: Mayor Davis

Council Discussion – Public Parking

Councilmember Miller questioned whether the Council had looked into mobile pay-for-parking options. He opined that they seemed to be a very cost effective, non-intrusive option. Mr. Miller explained that this would involve an app on a cell phone or visiting a website. He further explained that the user would simply enter their credit card information and the general location of where they were parking via a number.

Councilmember Shea opined that this would work in other areas; however, she suggested that a large percentage of Middleburg's population would ask "what is a QR code".

Councilmember Snyder noted that the Council had not seen a comparison of what the Town would pay to install meters and enforce the parking provisions compared to the revenue received. He suggested this was a losing proposition and that the Town was spending more to enforce the parking regulations than it received in revenue.

Vice Mayor Kirk noted that the Police Department was not doing much in the way of parking enforcement.

Councilmember Snyder noted that he was referring to the maintenance and enforcement costs plus the cost of the meters, which was estimated at \$70,000-125,000. He advised that he was starting to think that just putting up signage with a three hour time limit was more reasonable. Mr. Snyder noted that the Police Department could then do incidental enforcement based on the signs as they are able.

Vice Mayor Kirk opined that this would be more trouble for the police officers as they must have a system to chalk tires.

Councilmember Shea advised that she spoke with the Chief of Police, who had looked into a reader system that would allow them to quickly check cars in sections. She suggested he would not use a manual chalking system.

Town Administrator Semmes confirmed that the Chief would prefer to use an electronic system. She reported that he spoke with the Culpeper Chief, who liked the system they used.

Councilmember Snyder opined that not having meters was friendlier in a small town environment and would encourage people to come to Middleburg. He advised that he was also thinking of the feedback the Council received when it covered the parking meters. Mr. Snyder noted that people loved the free parking.

Councilmember Shea advised the new members that when the Council previously discussed this, they found there would be an additional cost to the Town for putting in the banking system to accept electronic payments.

Councilmember Miller suggested that if a mobile app was used, all of the transactions would be online based.

Town Administrator Semmes advised Council that Chief Panebianco indicated that Virginia Beach was going to that system so they could eliminate the parking meters. She suggested that if the Council agreed to stay with a paid system, this may be an alternative that would get the Town out from under the difficulties of accepting credit cards. Ms. Semmes noted, however, that there was a percentage of the population that would not be able to use it. She advised that she did not know how the Town could address that.

Councilmember Littleton noted that the Council was talking anecdotally. He advised that Middleburg was not Virginia Beach and noted that the issues they dealt with for parking were very different. Mr. Littleton suggested that the first question was whether the Council felt that parking should not be free. He further suggested that if it remained free, parking meters were something the Council did not have to worry about. Mr. Littleton questioned whether the parking meter revenue was incidental. He further questioned whether this issue was about revenue or moving people. Mr. Littleton advised that during his entire life, he had not seen a parking ticket issued in Middleburg. He noted that this was one of those things that had a lot of elements and suggested the need to look at them. Mr. Littleton advised that he was not saying the Town should create a study.

Councilmember Shea noted that the Town had done a study and the Council had repeatedly gone over the issue of parking. Councilmember Snyder noted that the Town had been talking about parking for two years. Vice Mayor Kirk explained that they wanted to wait until the end of the construction before making a decision.

Councilmember Snyder advised that he would like to offer free parking. Vice Mayor Kirk advised that she would not.

Councilmember Hazard reported that he spoke with officials from the Town of Culpeper, which has offered free parking for fifteen years. He advised that they said that free parking worked. Mr. Hazard noted that the issues associated with offering free parking in Middleburg were employee parking and whether two hours was enough time. He suggested the free parking be for a three hour period, with there being designated spots for employees for which they could purchase a parking pass. Mr. Hazard opined that, with regard to chalking tires, three hours would take care of the visitors and as to employees, it would be the same people violating the regulations every time. He suggested the Town also consider increasing the parking fines. Mr. Hazard noted that prior to the meeting, he distributed information on parking, some of which came from Culpeper and some from websites. He reiterated his suggestion to change the parking to three hour parking and to designate a place for employees to park all day. Mr. Hazard suggested the fee be increased to \$25 or \$50.

Councilmember Miller opined that there needed to be more teeth in the enforcement of parking tickets, such as a link to the DMV.

Town Clerk North reminded Council that the Town could not collect on past due parking tickets that were more than three years old. She advised that as a result, during her tenure, the Town had written off approximately \$10,000-12,000 in parking ticket fines. She noted that the Town did attempt to take violators into court on one occasion; however, that was not successful.

Councilmember Shea opined that the use of QR codes was a possibility in the future; however, she suggested there were too many people now that did not have those abilities.

Councilmember Littleton questioned what towns with six hundred residents and five thousand weekend visitors did. He opined that Culpeper and Virginia Beach were not Middleburg.

Councilmember Hazard reported that he looked at towns whose populations were two hundred fifty to three hundred and advised that they have found it was better to not have paid parking. He noted the excerpts in his handout that stated that big box stores did not have paid parking and suggested that if municipalities wanted their downtowns to be viable, they needed to offer free parking. Mr. Hazard questioned why someone would come here and pay when they could go two miles away and shop for free.

Councilmember Littleton opined that this was not applicable to Middleburg as there was no big box store within two miles. He further opined that no one was going to park at Walmart and then Uber to Middleburg. Councilmembers Snyder and Shea suggested they would not come to Middleburg at all.

Councilmember Miller opined that what was being cited was the convenience factor. He suggested that paying to park was another roadblock to economic success for some businesses. Mr. Miller opined that people did not want to bother paying for parking when they could go to strip malls that offered free parking.

Councilmember Littleton opined that people came to Middleburg because it was a tourist attraction. He further opined that strip malls were not tourist attractions.

Councilmember Snyder noted that he hated saving his change to pay for parking. Councilmember Hazard noted that people questioned whether they had enough quarters and, if not, got a ticket. Councilmember Miller noted that they kept quarters at his store.

Vice Mayor Kirk questioned whether the Council needed to make a decision during this meeting. Town Administrator Semmes advised that this was up to them.

Councilmember Snyder advised that he liked the idea of signing the parking with a three hour limit. He reiterated that the Town was spending more in maintenance and enforcement than it was receiving in revenue. Mr. Snyder noted that he would like to see a comparison.

Town Administrator Semmes opined that this was either a break even or an in the red operation.

Councilmember Hazard noted that if the Town wanted paid parking, it must upgrade the meters.

Vice Mayor Kirk advised that she liked that idea; however, she wanted to know how much policing the Police Department intended to do. She suggested they currently just drove around in their cars. Ms. Kirk advised that she recently witnessed an officer stop in the middle of traffic to yell at someone who was blocking traffic.

Town Administrator Semmes noted that parking enforcement in a small town was difficult. She advised that the Town did not want to over enforce, as people would get angry regardless of the system used. Ms. Semmes further advised that it wanted to do enough that people got the idea that they needed to move their cars. She opined that most of the people who would create an issue would be those who worked in Middleburg. Ms. Semmes reminded Council that the purpose of any parking enforcement was to get people to move; however, she opined that enforcement did not need to be overdone. She suggested the Council could give the Chief the direction to enforce it in the same manner as he handled other things - friendly and not over enforced.

Councilmember Littleton questioned how difficult it would be for an officer to walk at 11:00 a.m. to chalk tires or use some other system. He suggested this be done twice a day.

Councilmember Daly noted the benefit to the officer in walking a route. He advised that it would also make them visible and show them to be a part of the community. Councilmember Shea opined that they all did this at some point during the week.

Councilmember Daly opined that it would behoove the businesses to have designated parking spaces for their employees so they did not lose customers.

Vice Mayor Kirk noted that it was a race each morning to get to the free parking on the back streets so the employees would not have to pay.

Councilmember Hazard reiterated that Culpeper recognized this. He noted that they were not looking to ticket either visitors or employees. Mr. Hazard reiterated that they developed a system to give the employees a place to park that was reasonably priced.

Councilmember Snyder noted that he liked the idea that if owners needed to park in front of their businesses, they could come into the Town Office to get a one day pass. He noted that sometimes businesses were moving things or doing façade maintenance; therefore, they needed to be in those parking spaces for an extended period.

Town Clerk North reminded Council that the Town already had such a system for the bagging of meters. She noted that the cost was \$25/day and advised that the merchants used it frequently. Ms. North further reminded Council of the Liberty Street parking pass system that they put in place in which the Town sold ten parking passes for use in the Liberty Street Parking Lot. She reported that all ten passes were quickly sold and she now had a waiting list of approximately twelve more people, all of whom were employees. Ms. North advised that she could sell more passes if the Council expanded the number of permits that were available.

Vice Mayor Kirk suggested they park in the Baptist Church lot, which was free. Councilmember Shea opined that it would be intimidating for some people to walk on the back streets.

Town Clerk North advised that when some people called and found the parking passes only applied to the Liberty Street Parking Lot, they stopped the conversation as they did not want to walk a great distance. She noted that if they were in a nearby business, they would ask that their name be put on the waiting list.

Councilmember Hazard suggested the passes be made available at another lot. He further suggested that ten be made available in each lot.

Town Administrator Semmes noted that the Town used to offer parking passes for another lot; however, one business purchased them all. She suggested the Town could limit the number of passes that could be purchased by one individual.

Vice Mayor Kirk noted that the food bank used all of the parking spaces in that lot on the days they were open; therefore, people could not get into it.

Town Administrator Semmes questioned whether the Council wanted the staff to flesh out the idea of free parking and return with a proposal so the Council would know what it would look like.

Vice Mayor Kirk asked that a proposal be brought forward for the Council's vote.

Councilmember Littleton advised that he wanted to know what it would take to do it and that the Police Department would then be held accountable. He asked that they not say they would and then not do it. Mr. Littleton suggested they needed to know they could do it and were committing to do so when they appeared before the Council. He opined that the Police Chief must own the proposal and that the officers should not go around only when they felt like it.

Councilmember Snyder suggested the Council ask the Chief what was reasonable for his staff.

Vice Mayor Kirk asked that the Town Administrator and Chief of Police have a proposal available for the Council's consideration during their next meeting.

Councilmember Miller asked that it include a DMV link to collect past due parking tickets.

Vice Mayor Kirk asked that it include consideration for increasing the cost of the tickets. She questioned the current fee.

Town Clerk North advised that it was twenty dollars, with an additional twenty-five dollar fee being added if the violator was late paying the ticket.

Councilmember Miller noted that he received a parking ticket elsewhere, which was a sixty dollar violation. Councilmember Hazard noted that he recently received a thirty dollar ticket, which escalated if not paid with certain periods.

Councilmember Miller opined that the Town's fine was not set at market rate.

Vice Mayor Kirk asked the staff to check area ticket fines. Town Clerk North reminded Council that when they increased the parking ticket fine from \$10 to \$20, the staff first performed a survey. She suggested this be repeated.

Councilmember Miller advised that he wanted to see the financial situation associated with parking.

Vice Mayor Kirk noted that parking had never made money. She opined that sometimes it barely broke even.

Town Administrator Semmes reminded Council that if the meters were reliable, the Town would get more revenue. She noted, however, that the point of them was not to raise money but rather was to move people around.

Vice Mayor Kirk noted that the problem with parking meters was they were affected by a change in temperature. Councilmember Shea noted that they took up a lot of sidewalk space.

Councilmember Littleton noted that Arlington used parking kiosks. Vice Mayor Kirk noted that the Council did talk about those.

Councilmember Snyder noted that this was the third time the purchase of parking meters has been discussed during his tenure on the Council.

Councilmember Miller questioned what the Town would do with the old meters should the Council decide to move forward with free parking. He further questioned the cost to remove them and noted the need to fill in the sidewalk. Councilmember Littleton noted that this would be a one-time cost.

Town Administrator Semmes reminded Council that the Town must remove the old meters to put in new ones anyway; therefore, there would always be a cost.

Councilmember Snyder opined that someone would purchase the old meters. Councilmember Hazard noted that the Chief found a jurisdiction that was looking for back up meters.

Town Administrator Semmes noted that the Chief could only find one company that still made coin only meters.

Councilmember Miller suggested that selling the old meters would help to offset the cost of removing them and installing signs.

Council Discussion – Extension of Trolley Service Contract – VRTA

Councilmember Littleton noted that he would vote to give the trolley company thirty days' notice to terminate beginning today. Councilmember Miller agreed.

Economic Development Coordinator Pearson reminded Council of the Middleburg Film Festival that was scheduled for October 20-23. She noted that the Town received a request from them to add another trolley.

Vice Mayor Kirk and Councilmember Littleton suggested they could contract for the service themselves.

Vice Mayor Kirk suggested the trolley run through the end of October. Councilmembers Littleton, Daly and Snyder agreed.

Vice Mayor Kirk questioned whether there was a reason to use it in December. Economic Development Coordinator Pearson confirmed there was not.

Councilmember Shea encouraged the Council to look at effective ways to use the trolley when it could move people around, such as during the Christmas season. She suggested they find parking outside of the core downtown area for employees and use the trolley as a shuttle. Ms. Shea suggested a grant could be used if the Council wanted to use them permanently. She agreed the Council should get rid of them now as they were not working.

Councilmember Snyder suggested this item be brought back to re-examine specific uses in tandem with grant money.

Councilmember Littleton opined that it was a tool that the Town should think about using for a big event. He noted that it may also be helpful to move pedestrians around town.

Councilmember Shea suggested it be used to shuttle people to parking. She further suggested a public-private partnership to bring people into town.

Vice Mayor Kirk suggested it be used for the Middleburg Film Festival to move people around town.

Councilmember Miller suggested that if it was used in the future, its use needed to be well thought out and planned. He further suggested the need for large offsite parking areas where the trolley could bring people into and out of town. Mr. Miller opined that this would be the most effective use. He advised that in a small town, people could walk the four blocks. Mr. Miller opined that it was about getting people in and out of town effectively.

Councilmember Littleton asked that, even though the contract ended the end of October, the staff still give the trolley company notice.

Council Discussion – Draft Ordinance – Short Term Rentals

Town Planner Moore reminded Council that a couple of months ago, they had ongoing discussions about an ordinance for short-term rentals. He noted that Airbnb was one platform for such rentals; however, there were others. Mr. Moore reminded Council that they initiated an ordinance in June and referred this matter to the Planning Commission for study and a recommendation. He reported that the bulk of the ordinance that was presented to the Council remained unchanged. Mr. Moore noted that the Commission did offer some tweaks to a few of the performance standards. He reminded Council that short term rentals applied to rentals of fewer than thirty days. Mr. Moore advised that under the proposed ordinance, this use would be a permitted use that could be available for consideration in the R-1, R-2 and R-3 Districts. He noted that it would not just be for Salamander; although, it would apply to the Residences at Salamander, which were zoned R-1 and R-3. Mr. Moore reiterated that this ordinance would include the R-1 and R-3 Districts outside of the Salamander property and the R- 2 District, which encompassed all of the Ridgeview Subdivision.

Town Planner Moore advised that a special use permit would be required in all cases and that this would not be a by-right use. He reiterated that owners must apply for a special use permit on a property-by-property basis. Mr. Moore advised that the ordinance included a set of minimum performance standards that must meet. He opined that the minimum square footage requirement for lots would eliminate a good portion of the properties in all of the districts and noted that the minimum was proposed at ten thousand square feet. Mr. Moore advised that there was also a minimum separation requirement between neighboring dwellings. He noted that even if a house was on a large lot, if it was built close to the setbacks, it may not meet the minimum required separation. Mr. Moore advised that the Commission held a lot of discussion regarding the Ridgeview Subdivision. He suggested that if a house was demolished and a new house was built to the current side setback of only seven and a half feet in the R-2 District and if the neighboring house was also at the seven and a half foot setback line, this would only result in fifteen feet of separation. Mr. Moore advised that the ordinance required a minimum separation of at least twenty-five feet. He reiterated that there were minimum performance standards that must be met. Mr. Moore explained that despite the General Assembly language that passed that basically stated that this use was the same as a residential use, he did not believe it was. He opined that it may be appropriate in certain locations depending on the buffering, frequency with which it was proposed and other factors. Mr. Moore reiterated that the Council would consider this on a case-by-case basis. He further reiterated that the bulk of the language that the Council saw in June remained unchanged, with the exception of tweaks to a few of the performance standards.

Councilmember Snyder opined that it appeared the Planning Commission changed the radius for the location of the property management contact to increase it. He advised that he disagreed with that and would like the property management contact to be as close as possible. Mr. Snyder noted that he did not like the idea of extending this toward Leesburg, Warrenton or Winchester.

Town Planner Moore noted that the Planning Commission looked at this carefully and felt differently. He explained that they felt it was reasonable to have a management company in Leesburg.

Councilmember Snyder disagreed and noted that it would make it easier for people to apply for this use. Vice Mayor Kirk agreed. Councilmember Snyder noted that he did not want to make it easy. He advised that he wanted the management contact to be local and opined that Leesburg was not local.

Councilmember Shea questioned whether there were any property management firms in town. Councilmember Snyder opined that there were real estate companies. Councilmember Littleton noted that this did not mean they handled property management. He questioned whether there was a firm in Middleburg that did Airbnb rentals and opined that no one did. Economic Development Coordinator Pearson noted that she just asked this question today and reported that there were none.

Councilmember Snyder noted that he rented property for ten years and advised that he paid his rent to a management company. Councilmember Littleton opined that there was a difference here and advised that it did not just involve arranging its use. He noted that it involved making immediate repairs in the event something occurred, such as a pipe burst or the electricity went out.

Town Planner Moore advised Council that this idea was generated as of the result of one of the original violations that occurred in town. He explained that that particular property was used solely for this purpose and noted that the owner resided in Washington, DC. Mr. Moore reported that the owner thought he was close enough to respond if anything happened. He advised that the Planning Commission wanted to be somewhat flexible and noted that an owner may go out of town seasonally and wanted to have a management company to manage the rental. Mr. Moore noted that if the distance was too restrictive, there may not be anyone available.

Town Planner Moore noted that the Planning Commission added a provision that the check-ins must be in-person. He explained that they did not want this to be a totally faceless transaction. Mr. Moore advised that, as a result, there could not be a situation where arrangements were made over the Internet, with there being a lock box on the door. He reiterated that the check-in must be in person and that someone must meet the renter face-to-face. Mr. Moore advised that the Commission felt that was important. He advised that in terms of management, they believed that if someone needed to respond to an emergency that a twenty mile radius was fine. Mr. Moore noted that it was originally fifteen miles; however, there was no reason for that number. He advised that some members of the Commission felt it should be more restrictive; however, the final recommendation was for twenty miles.

Councilmember Hazard explained that what it came down to was that this ordinance was not just for Airbnb but would apply to anyone who wanted to use their property for this use. He noted that the Commission did not want to penalize everyone. Mr. Hazard opined that no one would have heartburn if the number was changed.

Councilmember Snyder noted that he would like to shrink it enough so it would not include major towns in the area. He suggested it be a ten or fifteen mile radius. Councilmember Hazard noted that this would just include Middleburg.

Councilmember Shea expressed concern that if the ordinance was too restrictive, it would not be enforceable. She advised that this would then result in what was happening at the State level.

Councilmember Snyder opined that he could justify that this was reasonable.

Councilmember Shea suggested that if there was not a property management company in town, the Council could not limit it to that.

Councilmember Snyder explained that he was thinking of how long it took to respond from many parts of the County. He opined that it could take forty-five minutes to get from here to Leesburg and vice versa if there were festivals or other events occurring.

Vice Mayor Kirk noted that if there was an event in Aldie, such as the October Festival, you could not get here at all. She questioned whether there was a limit on the number of rentals that would be allowed in total. Ms. Kirk opined that as currently written, the ordinance would allow almost everyone to do this.

Town Planner Moore confirmed there was no implied limitation on the total and advised that those were generally not treated favorably in courts.

Vice Mayor Kirk expressed concern about turning the town's residential areas into rental areas.

Town Planner Moore reminded Council that this use would require a special use permit in all cases. He advised that he did not foresee that the Town would receive a flood of applications, especially given the \$2,000 application fee that did not guarantee an approval. Mr. Moore noted the performance standards, particularly the minimum lot size and separation from dwellings requirement that would net out a lot of properties.

Councilmember Miller inquired as to the number of eligible properties. Town Planner Moore noted that he did not have that information; however, he could provide a rough idea at the next meeting based on lot sizes.

Vice Mayor Kirk asked that he do so. She questioned the number that would apply to the Residences at Salamander. Town Planner Moore advised that it would apply to all forty-nine homes.

Councilmember Hazard noted that a lot of the lots in the Ridgeview Subdivision were only seven thousand square feet. Town Planner Moore opined that the majority would not meet the standards.

Councilmember Shea noted the parking requirement. Town Planner Moore opined that this would be a big issue for many.

Councilmember Daly noted that townhouses were not included. Town Planner Moore confirmed that this use would only be allowed in single-family detached dwellings.

Vice Mayor Kirk questioned whether there was a minimum stay required. She suggested it should be more than one night. Town Planner Moore confirmed there was no minimum stay dictated in the ordinance. He suggested the Council could consider that during their individual application reviews.

Vice Mayor Kirk advised that she would like for the Council to consider this and opined that single night stays were a nightmare. She reminded Council that when they first started talking about the Salamander Resort, it was not going to be that huge. She opined that this would basically give them forty-nine more rooms.

Councilmember Snyder noted that when Salamander was originally approved, it was for one hundred twenty rooms. He agreed it has basically grown.

Councilmember Shea noted that the applicant must provide off-street parking. She suggested the ordinance could be tweaked in the future. Ms. Shea opined that due to the requirements, there was already a limitation as to how much of this use could be done. She noted the high cost for a special use permit.

Councilmember Snyder reiterated his request to change the radius for the property management contact as he wanted to keep them close.

Councilmember Miller expressed concern regarding the minimum insurance requirement. He questioned whether \$500,000 was a lot if there was an incident and noted that he personally carried more.

Town Planner Moore noted Councilmember Shea's point about trying to structure something that was not so onerous that it would serve as an example for people who were lobbying for State legislation that would preclude the Town from regulating this use at all. He advised that he was trying to come up with something that was appropriate, but that would not allow someone to say the requirements were unreasonable. Mr. Moore explained that the \$500,000 amount went back to the State legislation that was passed. He noted that its implementation required it to be reapproved. Mr. Moore advised that that legislation prohibited localities from regulating this use; however, it did not prohibit them from imposing certain regulations, one of which was to provide a minimum of \$500,000 in liability insurance. He explained that this was why he used that dollar amount and noted that normally, he would have used \$1 million. Mr. Moore noted that the definition of the use was from the State legislation word for word. He advised that he specifically echoed the State legislation in the draft ordinance, including the definitions, so it would not look like the Town was trying to be onerous.

Councilmember Hazard noted that a special use permit was required in all cases. He questioned how "all cases" were defined. Mr. Hazard questioned whether this meant per dwelling or per rental. Councilmember Littleton questioned whether it meant instance of rental. Town Planner Moore explained that the ordinance required a special use permit under the R-1, R-2 and R-3 Districts. He advised that there was no district in which it was an allowed use.

Vice Mayor Kirk noted that under the definition, this was a short-term rental if it was fewer than thirty consecutive days. She questioned whether the ordinance could contain a requirement that the rental be for three or four days. Ms. Kirk explained that she did not want these to be places for bachelor parties.

Town Planner Moore suggested this not be in the definition. He advised that if the Council believed there should be a minimum stay, this could get tricky.

Vice Mayor Kirk stressed that she did not want the rentals to be on a nightly basis. She suggested they needed to be greater than one day so that what occurred before would not be repeated.

Councilmember Shea expressed concern that if the ordinance was too restrictive, it would trigger State legislation. She suggested the need to look at the intent of what the Council was doing and whether the regulations were addressing it. Ms. Shea noted that if someone rented on a nightly basis for parties, there were noise and other regulations that would trigger that would not allow them to get a permit again. Vice Mayor Kirk noted that once they had the permit, they had it.

Councilmember Snyder questioned the ease with which a permit could be revoked. Town Planner Moore confirmed it could not easily be revoked; however, it was possible. Councilmember Snyder noted that it was his impression that it was reasonably difficult.

Vice Mayor Kirk suggested the Council make the permit reasonably difficult to obtain. Town Planner Moore suggested those details, in his opinion, were best discussed during individual permit applications. He noted that an applicant could offer their own framework, such as limiting the use to less than one hundred eighty nights per year.

Vice Mayor Kirk questioned whether they could prohibit nightly rentals in the application. Town Planner Moore confirmed they could. He noted that the Council would need to distinguish why they were doing so for a particular property.

Vice Mayor Kirk explained that this was why she wanted it in the ordinance.

Councilmember Shea questioned whether Ms. Kirk was sure that she did not want nightly rentals. Vice Mayor Kirk confirmed she did not and noted that there were hotels for that.

Councilmember Miller questioned whether someone would pay a \$2,000 fee if it was only rented for one night.

Councilmember Littleton opined that they would as they would only pay the fee once; however, they could rent the house nightly for up to one hundred eighty days at five hundred dollars/night. He opined that Councilmember Shea had good points in two areas. Mr. Littleton suggested the Council wanted to try to be firm but reasonable. He opined that people who wanted the State legislation were watching what localities did and would go back to the legislators to lobby that the Town was usurping their will. Mr. Littleton agreed it would be good to follow the State as closely as possible to show reasonableness. He questioned how a special use permit would be enforced and noted that the Town would not go into peoples' homes. Mr. Littleton suggested the need to be reasonable; and, opined that people would come to the Town to do the right thing. He opined that if the requirements were too onerous, it would create a shadow industry.

Vice Mayor Kirk suggested the Council not put the onus on the citizens to report a violation. She opined that many would in order to protect their home values.

Councilmember Littleton advised that he liked the idea of requiring that the stay be greater than for one night and opined that this was reasonable.

Councilmember Snyder noted that the State legislation was silent on the issue of location of the property management contact.

Councilmember Littleton reminded Council that the State legislation prohibited regulation. He suggested that if the Town's attempt to regulate was overreaching, the State may re-adopt their legislation. Mr. Littleton opined that there was no one within a fifteen mile radius that provided property management services beyond collecting rent.

Councilmember Snyder noted that when he rented property, he received maintenance by calling a company who arranged to have someone do the work. Economic Development Coordinator Pearson noted that those people were not located in Middleburg anymore. Councilmember Littleton opined that the management companies for the apartment buildings could be located in Arlington now.

Vice Mayor Kirk noted that fifteen miles would not get one to Leesburg, Purcellville or Warrenton. Councilmember Littleton opined that the Town would get beaten up for that requirement.

Councilmember Shea noted that the staff was looking for a property management company on another matter. She questioned what they found. Town Administrator Semmes reported that they had to go to Leesburg and Fairfax to find companies. Vice Mayor Kirk suggested they also look in Winchester and Purcellville. She opined that there needed to be more than one offering.

Councilmember Littleton questioned whether the property owner would be required to get a business license from the Town. Town Planner Moore confirmed he would.

Councilmember Littleton questioned whether he would have to come to the Town each time he rented the property. Town Planner Moore confirmed he would not. He explained that he would go through the standard practice to remit the lodging tax.

Councilmember Littleton noted that once the special use permit was issued, the owner could rent the property and the Town must trust he was following the terms of the special use permit.

Councilmember Daly questioned whether a special use permit was needed for each home or whether a homeowner with multiple homes could pay the \$2,000 fee for all of them. Town Planner Moore confirmed that a permit was needed for each house.

Councilmember Daly cited Salamander as an example and questioned whether they could not pay the Town \$2,000 and apply for a permit for all forty-nine units. Town Planner Moore noted that he would not speak for Salamander and opined that the Council would hear from them during the public hearing. He advised that he has had discussions with their representative and opined that they were not necessarily envisioning this use for their entire property. Mr. Moore further opined that they were willing to offer homeowners the opportunity that they could serve as the management entity. He advised that he anticipated receiving applications from the property owners, who must be a party to the application. Mr. Moore noted that he did not want anyone to think that Salamander planned to build and retain ownership of all forty-nine houses so they could rent them out. He advised that they could not do so as the primary use of the dwelling must be residential.

Vice Mayor Kirk suggested that someone could purchase four or five houses to do this. Town Planner Moore confirmed they could; however, he noted that they must apply for a special use permit to do so. He reminded Council that each property's primary use must be as a residential dwelling. Mr. Moore noted that the ordinance did not distinguish between an owner-occupied residential dwelling and a renter occupied one. He suggested the owner could rent out a house for in excess of six months and then use it for this use for the other six months. Mr. Moore advised that this was why the Council would look at the applications on a case-by-case basis. He suggested the Council would be hesitant to approve applications if they saw multiple ones from the same owner.

Vice Mayor Kirk noted that, years ago, a lot of people bought houses in the Ridgeview Subdivision and put tenants in them. She advised that there were no families. Ms. Kirk noted that those properties have now reverted back. She advised that she did not want them to be just rentals, but rather she wanted them to contain families. Ms. Kirk noted that the town was close to dying during that time.

Town Planner Moore reminded Council that whether the occupant was a renter or owner did not dictate whether the house would contain a family. He opined that today's generation's thoughts on home ownership were changing. Mr. Moore further opined that many people preferred rental properties, as they were more transient in nature due to their careers.

Vice Mayor Kirk advised that she did not want the town to go back to that. She advised that she felt strongly that the rental must be for greater than one day.

Town Planner Moore requested direction from the entire Council. He advised that, if they were in favor of this, he would draft a new version that included a provision that the rental must be for greater than one night as a performance standard. The majority of the Council agreed they were in favor of this.

Councilmember Snyder reiterated that he liked the idea of having a tighter radius than Leesburg. Councilmember Miller noted that this would be a red flag. Vice Mayor Kirk noted that while she agreed with Councilmember Snyder, she must be realistic as there were no local management companies.

Economic Development Coordinator Pearson reported that there was one company in town. Councilmember Shea suggested the Council could not write an ordinance for one company.

Town Planner Moore reminded Council that usually after a work session, items would be scheduled for public hearing the following month because of the tight turn around. He noted, however, that there was an extra week this month; therefore, if the Council desired, the public hearing could be scheduled for their October 13th meeting. The members of Council agreed to schedule the public hearing in October. Councilmember Daly noted that he would be absent for that meeting.

Council Discussion – Request for FY '18 County Capital Improvement Funding

Town Administrator Semmes advised Council that the County only gave the Town until the end of September to submit an application. She noted that there was not a lot of money available for these kinds of improvements. Ms. Semmes advised that this was an opportunity to ask the County for funds for improvements to County facilities or pedestrian/transportation related improvements that would benefit the County. She reminded Council that recently, they have been talking about two missing pieces of sidewalk related to the library and school, both of which were County facilities. Ms. Semmes advised that the first one was approximately seventy-five feet of missing sidewalk on Stonewall Avenue, where the children walked. She noted that this would connect to the Community Center and the Middleburg Library. Ms. Semmes advised that the second one was longer; however, it was flat and was almost ready for improvements. She explained that this section was located near the new landing created as a part of the Marshall/Madison Project. Ms. Semmes noted that it was always intended that the sidewalk would go down East Marshall Street to connect to the existing sidewalk in front of Mosby's Square. She opined that the Town could seek the full amount from the County, which the engineers estimated at \$190,000; however, she noted that the letter stated that the County would like to know if the Town had any resources that it could dedicate to the project. Ms. Semmes suggested that if the Town contributed \$38,000, the County may look more favorably upon the request. She advised Council that there was no downside to asking for the money.

Councilmember Shea suggested the two projects be prioritized in the event funding was not available for both so the Town would not be required to do both projects with Town funds. Town Administrator Semmes advised that the Town was not required to do them at all if the funding was not received.

Councilmember Snyder suggested the Council could prioritize them if the funding request was cut. He questioned why the Council should invite the County to make cuts by giving them priorities.

Town Administrator Semmes noted that this was the engineer's thoughts behind not providing a break out of the costs. She reminded Council that this would not be a big project and noted that it would be difficult to find a contractor willing to do a project of this size.

Councilmember Snyder opined that the more important section was the one by the Community Center.

Vice Mayor Kirk suggested the staff should tell the Middleburg Charter School principal that the adults should not walk in the middle of the road as this set a bad example for the children. She further suggested the adults should walk on the sidewalk. Town Administrator Semmes opined that this would be a good conversation for the Chief of Police to have with him.

Councilmember Miller questioned whether the Town could handle a match of \$38,000. Town Administrator Semmes opined that it could. She noted that the funding would not come from the current budget. Ms. Semmes explained that, if approved, it would be included in next year's budget.

Councilmember Littleton inquired as to what the Town would not do in order to provide the funding. Town Administrator Semmes opined that this project would affect the Contingency Reserve by having less of a reserve.

Councilmember Miller suggested the need to look the intersection of Marshall/Jay Streets and noted that there was no curb ramp on the northwest corner. He asked that this be added to the project. Town Administrator Semmes confirmed it could be added and noted that this was an ADA issue. The remainder of Council agreed to amend the request to include this item.

Councilmember Miller moved, seconded by Councilmember Snyder that Council endorse a request to Loudoun County for FY 2018 CIP funding in the amount of \$149,939 for construction of two missing sidewalk connections on East and West Marshall Street, as outlined in the staff report and direct staff to include a \$38,000 Town match for this project in the Town FY 2018 budget.

Councilmember Shea moved to amend the motion to include the ADA required curb and that the request be increased by that additional cost, with the Town amount staying at \$38,000. Councilmembers Miller and Snyder agreed to accept this amendment.

Vote: Yes – Councilmembers Kirk, Daly, Hazard, Littleton, Miller, Shea and Snyder

No – N/A

Abstain: N/A

Absent: Mayor Davis

(vote on motion as amended)

Council Discussion – Utility Capital Project Update

Town Administrator Semmes noted that she provided an outline of the Town's Utility Fund CIP. She reported that the first three projects were bond funded and noted that the Town borrowed \$1.5 million in order to complete them. Ms. Semmes advised that the Town had less than \$700,000 left to complete the West End Pump Station Project. She noted that the project was not at a point where she could provide a cost; however, she would do so once she received the engineer's estimate. Ms. Semmes advised that in terms of the other projects, the list included projects that were both water and sewer related. She noted the need for updated cost estimates, which she and Councilmember Snyder hoped to provide after working with the engineer.

Vice Mayor Kirk questioned how the improvements in the Ridgeview Subdivision dropped to fourth place. She noted that she was experiencing low water pressure.

Town Administrator Semmes confirmed the list was not prioritized.

Councilmember Snyder opined that the Ridgeview neighborhood was the Town's biggest problem area. He suggested that a number of issues could be cured with the installation of a single eight-inch line, in conjunction with the existing twelve-inch line.

Councilmember Shea noted that she did not have a problem with water pressure and there was only one house between hers and Vice Mayor Kirk's. She suggested this was an important consideration when the Town looked that project.

Town Administrator Semmes noted that Vice Mayor Kirk was on a street served by a two-inch line. Vice Mayor Kirk noted that different parts of the street were served by different lines.

Councilmember Snyder noted the need to look not only what at needed to be replaced but how to efficiently and cost effectively replace the lines. He suggested the project may need to be staged over multiple budget years. Mr. Snyder opined that the cost to repair and replace the lines was roughly \$500,000.

Town Administrator Semmes noted that some of the items, such as the SCADA system for Wells 3 and 4 and the water level indicators for the two water tanks, may be done in conjunction with the West End Pump Station Project.

Councilmember Snyder noted the last page of the information provided and suggested the need to talk about useful life. He advised that not all of the equipment would have a useful life of eighty years. Mr. Snyder explained that the object of having the assets listed was so the Town would know when the useful life of an asset ended so it could look at the Water and Sewer Fund to determine whether the money was available to replace it without having to borrow money and increase rates. He reported that the rates already covered asset replacements.

Vice Mayor Kirk noted that most of the items listed had a life through 2060 or 2090. Councilmember Snyder noted that this assumed an eighty year life.

Councilmember Littleton noted that even if an item only had a forty year life, that would be 2030; therefore, the Council had time to think about the replacement.

Councilmember Snyder opined that the utility system was now set up to be well managed and sustainable, which was not the case in the past.

Discussion

Vice Mayor Kirk noted the political sign located on the edge of town and reported that she asked the Town Planner to discuss it. She reminded Council that the Town had a sign ordinance that indicated that political signs could only be a certain size.

Town Planner Moore advised Council that there was a Supreme Court case last year – Reed vs. Belmont – that addressed this issue. He noted that the Town's ordinance excluded certain signs, including political signs, from regulation as long as they were less than four square feet. Mr. Moore explained that the problem was the ordinance referenced multiple sizes for different types of temporary signs and advised that the Supreme Court said municipalities could not have different standards for different types of signs based on content. He noted that the argument was that municipalities were regulating size due to aesthetics; however, the Supreme Court rejected having different standards. Mr. Moore explained that this made many ordinances, including most

sign ordinances, unenforceable when it came to size limits. He opined that this must be addressed through a major revision to the Town's ordinance, which would take some work. Mr. Moore advised that the Town Attorney provided him with a model ordinance that some attorneys drafted; however, it was horrible. He noted that it was her job to protect the Town from legal exposure; however, what the model did for the proliferation of signs was not good. Mr. Moore reiterated that it would take an effort to rewrite the ordinance and noted that the Planning Commission must be heavily involved. He advised Council that the Town currently had no enforcement ability over size and the number of political signs on private property.

Councilmember Snyder opined that enforcing political speech signs was a bad idea.

Councilmember Littleton questioned whether there was another way to address this currently, such as declaring the sign to be a public nuisance. He further questioned whether it was a danger for traffic. Town Planner Moore noted that those were not things he could enforce. Vice Mayor Kirk noted that it was back far enough and on private property.

The Council held some discussion regarding this particular sign and who owned the property on which it was placed.

Vice Mayor Kirk questioned the status of cleaning out the garages at the Health Center building. She further questioned whether the items were going to auction. Town Administrator Semmes advised Council that this was something the Facilities & Maintenance Supervisor was addressing and noted that he was on emergency family leave until September 28th. She advised that once he returned, the staff would work on it again. Ms. Semmes suggested the need to talk about staff alternatives, such as a part-time employee, for when he was absent. She noted that a contractor was helping fill in as much as possible; however, he had other jobs.

Vice Mayor Kirk suggested the need to hire a contractor to fill in for the Facilities & Maintenance Supervisor during his absence. Town Clerk North advised that the problem was not just about getting someone to do the work, it was about the loss of institutional knowledge when Mr. Simms was absent. She noted that no one knew what needed to be done when and who should be called.

Vice Mayor Kirk questioned the status of the landscape timbers that were in the right-of-way in front of 101 Sycamore Street. Economic Development Coordinator Pearson reported that she emailed the property owner to let him know the Town had received a complaint and that while it was up to VDOT to enforce, the Town would like for him to address it first.

Vice Mayor Kirk noted that in addition to the landscape timbers at the edge of the road, there were reflectors and flags. She advised Council that a neighbor complained that this reduced the road down to one lane, which it did.

Councilmember Snyder suggested it would be nice if the Police Chief came up with a list of vegetation that needed to be cleared for reasonable site distance at the intersections. He further suggested the officers could do this while they were driving around.

Councilmember Littleton noted that even though they had only been in place for about six months, many of the bricks in the new crosswalks were crumbling.

Town Administrator Semmes reported that this was due to the milling machine, which ran over and broke them. She advised that the contractor was supposed to fix them.

Councilmember Hazard questioned why bricks were used and opined that they were supposed to be concrete pavers. Town Administrator Semmes reported that the pavers had less compressive strength than the street bricks. She advised that the bricks were recommended by the engineers.

Councilmember Snyder opined that everything should be okay as long as the repairs were made before the freeze cycle began.

Councilmember Littleton reiterated that they were broken at every crosswalk.

Councilmember Miller questioned why there were steel plates at the crosswalks. Town Administrator Semmes explained that the milling machine dug into the concrete strips on either side of the crosswalks; therefore, the contractor had to replace the concrete. She noted that it was part of their punch list.

Councilmember Littleton noted the recent talks about the maintenance of buildings. He advised that as he was walking around the Historic District, he noticed that there were a lot of buildings that were in need of maintenance. He advised that he was not talking about hail damage but rather things such as wood rot. Mr. Littleton noted the need for substantial maintenance. He advised that he did not know who was responsible and questioned how the property owners were reminded of their responsibility to upkeep their buildings. Mr. Littleton noted that a lot of businesses still had broken windows. He reminded Council that this was now October and advised that he was shocked that they were still broken.

Councilmember Snyder opined that some property owners may still be working with their insurance company.

Councilmember Littleton reiterated that it had been three, almost four months, since the storm.

Councilmember Daly opined that the problem was supply and demand. He noted that he was still waiting for roofing materials and glass for his one hundred fifty year old church.

Councilmember Littleton reiterated that he was talking about things like wood rot and peeling paint. He noted that these were long-term issues.

Councilmember Shea questioned whether the Town was allowed to check with building owners, whose buildings were in poor shape, to see if they had any plans for making repairs due to the hail damage, as well as other necessary repairs. She suggested the Town could make allowances if they were having difficulty with their insurance company or in finding a contractor.

Councilmember Snyder reminded Council that the Town had an ordinance that prohibited demolition by neglect.

Councilmember Littleton noted that they were in the Historic District. He questioned whether the HDRC would enforce this ordinance.

Town Planner Moore advised Council that it was his role to enforce the zoning ordinance. He confirmed there was an ordinance that was geared toward prohibiting demolition by neglect; however, he opined that the threshold was high before he could order something to be done. Mr. Moore advised that this would not address something like peeling paint. He reminded Council that the Town did not have a property maintenance code.

Councilmember Littleton questioned whether the Town could have one. Town Planner Moore noted that he was not prepared to answer that question.

Councilmember Littleton noted that there was a building on Route 50 whose entire front side was rotting. He suggested this would be an eight hundred dollar fix. Mr. Littleton noted that there were nails that were being pulled off the building.

Councilmember Daly suggested the Town write to the owners and say that “while they were not in violation, the Town was sending them a letter as a courtesy”.

Councilmember Littleton opined that they already knew they were not spending money on maintenance. He inquired as to the tools that the Town could and could not use. Mr. Littleton opined that there may not be any and suggested that if this was the case, the Town should go to the owners to ask them to do maintenance.

Councilmember Shea agreed the Town should ask the owners what they were doing.

Town Administrator Semmes noted that the staff normally addressed issues such as this on a complaint basis. She confirmed that it has had some success and could enforce the demolition by neglect ordinance. Ms. Semmes advised that the previous Town Planner was able to work with a property owner to initiate repairs.

Town Clerk North reminded Council that during their last meeting, a question arose as to whether a motion passed when three members abstained from voting. She reported that Section 6-10 of the Council’s Rules of Procedures stated that questions were determined by a majority vote of the members voting on the question. Ms. North advised that under the Council’s Rules of Procedure, since three members abstained from voting, the motion actually did pass on the original vote.

Town Clerk North noted that a question recently arose as to whether a citizen could place an item on a Council agenda. She reminded them that Section 4-1 of the Council’s Rules of Procedures required that citizens who wished to have an item placed on a Council agenda were required to contact the Town Clerk seven days prior to the Council meeting to make the request. Ms. North further reminded them that if there was a statutory requirement that the Council must address the item, it would automatically be placed on the agenda and, if not, the Mayor or a member of Council must agree to sponsor it as an agenda item.

There being no further business, Vice Mayor Kirk declared the meeting adjourned at 7:49 p.m.

APPROVED:

Darlene Kirk, VICE MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk