



MIDDLEBURG TOWN COUNCIL Regular Monthly Meeting Minutes



February 20, 2014

PRESENT: Mayor Betsy A. Davis
Vice Mayor C. Darlene Kirk
Councilmember Trowbridge Littleton
Councilmember Catherine “Bundles” Murdock
Councilmember Kathy Jo Shea
Councilmember Mark T. Snyder
Councilmember David B. Stewart

STAFF: Martha Mason Semmes, Town Administrator
Angela K. Plowman, Town Attorney
Rhonda S. North, MMC, Town Clerk
David M. Beniamino, AICP, Town Planner
Cindy C. Pearson, Economic Development Coordinator
Debbie J. Wheeler, Town Treasurer

ABSENT: Councilmember Kevin Hazard

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on February 20, 2014 (rescheduled from February 13, 2014 due to inclement weather) in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis led Council and those attending in the Pledge of Allegiance to the flag.

Approval of Minutes

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the January 9, 2014 Regular Meeting and January 23, 2014 Work Session meeting minutes as amended.

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

No – N/A

Abstain: N/A

Absent: Councilmember Hazard

(Mayor Davis did not vote as there was no tie to require her vote)

Staff Reports

Town Administrator Semmes thanked Maintenance Supervisor Marvin Simms for his work in supervising the recent snow removal. She reported that the Town spent \$21,900 on snow removal between Wines Construction and Jesus Sandoval and his crew. Ms. Semmes reminded Council that the contractors could not get on the streets until VDOT completed their work and advised that Mr. Sandoval worked on the Town’s driveways and parking lots during that time. She noted that the cost included having Wines Construction return this week to remove the large piles of snow that were impeding parking throughout the town.

Vice Mayor Kirk noted that there was still a large pile of snow on her corner. Town Administrator Semmes advised that she would have Mr. Simms look around for such piles and have Wines Construction return to remove them.

Councilmember Murdock questioned whether the Town was going to do something for Mr. Simms. Town Administrator Semmes advised Council that this was up to them and suggested they talk about it later.

Town Administrator Semmes reported that the Town received the signed contract from IES. She noted that Mr. Inboden has been to Middleburg several times to meet with the Loudoun Water staff and would be here a lot starting next week. Ms. Semmes advised Council that she was exploring extending Loudoun Water's contract so there would be more of an overlap.

Councilmember Snyder questioned whether the Town Administrator asked IES what they thought would be optimal. Town Administrator Semmes confirmed she had not and opined that he would not know how much time this would take. She noted that she was in discussion with Whitman Requardt about updating the Town's Capital Improvement Plan (CIP). Ms. Semmes opined that it would be good for them to talk to Mr. Triplett as he had the institutional knowledge. She advised that he offered to do so on his own time; however, she believed it would be fair to buy some of his time from Loudoun Water if Whitman Requardt wanted to talk to him.

Councilmember Snyder agreed this was fair. He advised that he would like to see Whitman Requardt and Loudoun Water drive the number of hours, with the Town Administrator approving the amount.

Town Administrator Semmes reported that she was working on the draft FY '15 Budget; however, she was not able to get as far along as she wanted. She noted that this was an item on next week's work session and advised that she would get something to Council on Monday. Ms. Semmes advised Council that she and the Mayor met to talk about some of the larger budget items. She noted that there were still some unknowns, such as the cost for health insurance. Ms. Semmes reported that there was good news on the revenue side of the budget.

Councilmember Murdock expressed hope that the Town could address the issue of the Pink Box and the real estate taxes in order to save the Town money.

Councilmember Murdock noted that the sidewalks would be replaced next year as a part of the Washington Street Streetscape Project. She reported that someone recently fell on the sidewalk and advised that she received a report from the two individuals who helped her. Ms. Murdock opined that the individual should have sought medical treatment; however, she was embarrassed. She noted the need to remove the bricks and enlarge the areas where the roots were as people would not walk on dirt. Ms. Murdock advised Council that she walked on both sides of the street and saw places where she would recommend the bricks be removed. Councilmember Shea noted that there was a brick sticking straight up in front of Lou Lou's.

Town Administrator Semmes reminded Council that this would be part of the Washington Street Streetscape Project. She noted that there were some locations where the tree roots may need to be cut back. Ms. Semmes further noted that the Maintenance Supervisor has removed bricks in the past and advised that she would make sure he worked on that.

Vice Mayor Kirk questioned whether the staff had heard from Terri Domanski regarding the Middleburg Elementary School. Town Administrator Semmes confirmed she had not. She opined that the Charter School Committee was focusing on the details of the charter application, including how the school would operate, and were not focusing as much on the property at this time.

Councilmember Snyder questioned whether the Town Administrator had looked at the utility rate model. Town Administrator Semmes reported that she was working on the General Fund budget this month and would work on the Utility Fund budget next month. She noted that Whitman Requardt would provide her with an update on the CIP numbers and advised that most of the projects would fall under the Utility Fund budget. Ms. Semmes further noted the need for the CIP numbers for incorporation into the rate model.

Town Administrator Semmes noted that she had hoped to get the solid waste RFP out last week. She questioned whether Council was okay leaving flexibility in it regarding the day of collection, with preference being offered to those vendors who left the collection on the current day. Mayor Davis opined that it was acceptable as long as the vendors knew that the Town's preference was to keep the collections on Wednesdays. Town Administrator Semmes expressed hope to get the RFP out early next week.

Economic Development Coordinator Pearson reported that over one hundred people attended the reception for the Middleburg Arts Council's Cabin Fever Exhibit. She further reported that the Middleburg Beautification Committee was trimming trees to get them off the buildings and wires and was injecting the elm tree on the corner of Marshall/Pendleton Streets.

Councilmember Murdock questioned whether there was room on the **Treasurer's report** to add a category for the occupancy tax. She opined that now was the time to see that information.

Town Treasurer Wheeler noted that it was on the report at one time; however, she deleted it because the tax was only collected quarterly. She confirmed she would add it back.

Vice Mayor Kirk noted that some of the line items were close to 100% of the budget. She cited the example of some that were 326% and 111%. Ms. Kirk suggested the staff do a better job at keeping the line item expenditures within the budget.

Town Administrator Semmes noted that some of the expenditures were unanticipated, such as the new vehicle that was purchased due to an accident. She further noted that others were for items that were paid once a year.

Councilmember Shea noted that one line item that was consistently high was the workers compensation line item. Town Treasurer Wheeler noted that this was an item that was paid once a year. Town Administrator Semmes opined that this line item should not be over the budget.

Councilmember Shea noted that it was not that the workers compensation line item was over the budget, it was that it was at 100% of the budget. She acknowledged that this was because this item was paid all at once.

Town Treasurer Wheeler advised Council that she could add a printout to the report for those line items that were over the budget.

Councilmember Murdock noted that she was providing the **Police Chief's monthly report** on his behalf. She extended thanks to the Police Department staff and the Maintenance Supervisor for the outstanding job they did during the recent snow event. Ms. Murdock further reported that the Police Department was making progress and working to solve the theft at the antiques show.

Town Attorney Plowman reported that she would update the Council next month on some of the legislation that was currently under consideration by the General Assembly.

Town Administrator Semmes reported that Ms. Plowman was working on easements on the Well 4 property that were necessary for the office building that was under construction on the adjoining property. She noted that the property owner offered the Town a standard easement form and advised that the staff wanted to protect the Town's property interests. Ms. Semmes reminded Council that the easements would come to them for approval.

Town Administrator Semmes reported that new nozzle filters were installed earlier in the day at the **water treatment plant** (Well 4). She noted that the old ones were kept so the representatives could look at them when they returned to Middleburg to see if they were the reason for the problems the Town was experiencing with the back wash cycle.

Councilmember Snyder noted that the Town acquired extra nozzles so there would be a reserve.

Town Administrator Semmes extended appreciation to Till Smith who alerted the Town to a water leak on The Plains Road, which the Town had repaired.

Vice Mayor Kirk reported that her end of town has been experiencing low water pressure for the past two days. Town Administrator Semmes advised that the staff would let Mr. Triplett know of this problem in the morning.

Reports of Town Committees/Council Liaisons

Councilmember Shea reported that the Go Green Committee would appear before Council next week to give their annual report. She further reported that they were conducting research at the request of the Planning Commission on heat islands.

Vice Mayor Kirk noted that the Health Center Advisory Board was scheduled to appear before Council next month to give their annual report. She questioned whether this would be useful; and, noted that it would be discussed during the work session.

Town Clerk North reminded Council that it has been almost a year since they started meeting with the committees to receive their annual reports and advised that the reports were an item on next week's work session agenda. She explained that before she started to schedule the reports for the coming year, she wanted to see if the Council wanted to make any changes to the program.

Action Items (non-public hearing related)

Council Approval – Amendments to Potomac Conservancy Agreement

Town Planner Beniamino reminded Council that during the fall, Salamander came to the Town expressing a desire to build a challenge course in the conservation easement on their property. He further reminded them that the staff has been working with the Potomac Conservancy to determine whether this would be allowed. Mr. Beniamino opined that the Council had no issues with what Salamander proposed; however, the Potomac Conservancy did. He advised that the staff met with the Potomac Conservancy and Salamander and determined that the best way to resolve the issue was to amend the conservation easement. Mr. Beniamino reminded Council that all three parties must agree to and approve the new language. He advised that the staff, Salamander and the Potomac Conservancy were in agreement that the proposed amendment would allow Salamander to build the challenge course and that it would not harm the integrity of the conservation easement. Mr. Beniamino noted, however, that there was one other aspect that remained to be addressed. He explained that the Potomac Conservancy has had to have the property reappraised as the change to the easement could not raise the value of the property. Mr. Beniamino further explained that this was a tax issue resulting from the tax credits that were given for the easement. He opined that there would

not be a problem as the result of the appraisal; however, he reiterated that it was an outstanding issue. Mr. Beniamino asked that the Council approve the easement amendment with the condition that Salamander and the Potomac Conservancy sign off on it.

Councilmember Shea noted that the staff's memorandum stated that the "Council had no objections" to the proposal. She advised that she did not remember a vote or a consensus being reached by Council.

Mayor Davis opined that when this item was discussed, all of the members were in favor of it. Town Planner Beniamino confirmed that no vote was taken at that time as there was nothing to vote upon.

Councilmember Shea reiterated that she did not believe there was a consensus among the Council. She noted that the Council was previously introduced to the idea that the Potomac Conservancy needed to review the easement, with the Council agreeing to the review.

Town Planner Beniamino offered to review the plans for the challenge course with the Council. He noted that the agenda packet contained documentation on its proposed location, including schematics of the easement and the details of what the facilities would look like.

Councilmember Murdock questioned whether the Potomac Conservancy was fine with the proposal.

Town Planner Beniamino reminded Council that Salamander had a four acre site that it could disturb to build a challenge course under the existing conservation easement. He explained that the proposed amendment would shrink the size of the easement and would measure the size in a new way as the challenge course would be linear. Mr. Beniamino noted that the amendment would also allow for a no-water toilet. He confirmed that the Potomac Conservancy was on board with the concept of being more environmentally conscious.

Councilmember Murdock inquired as to whether there would be lighting associated with the challenge course. Town Planner Beniamino reported that the course could not be served by water, power or sewer; however, there would be a power line that would provide minimal light for safety purposes.

Councilmember Murdock questioned whether the challenge course would be utilized at night. Trey Matheu, the General Manager for the Salamander Resort, confirmed it would not as it would be dangerous to do so given the high levels associated with the course.

Town Planner Beniamino explained that the tree canopy created some darkness even during the day. He further explained that the participants must be able to hook into the system and would need minimal light to do so. Mr. Beniamino reminded Council that the Potomac Conservancy checked the property annually to make sure it continued to be in compliance with the easement. He advised that if they felt the lighting was too intrusive, they would raise the issue.

Vice Mayor Kirk inquired as to whether there would be any security measures associated with the course. She expressed concern that kids may find a way to use it at night.

Mr. Matheu advised Council that while he did not know the specific plans, he has worked at resorts that ran these types of courses. He confirmed that there was a way to secure the ropes when the course was unattended to keep people from accessing the site.

Councilmember Snyder moved, seconded by Councilmember Littleton, that Council approve and authorize the Mayor to sign the First Amendment to the Deed of Open Space Conservation Easement and Vacation between the Town, the Potomac Conservancy and Salamander Development, LLC conditioned upon the final approval of the amendment by the Potomac Conservancy.

Councilmember Shea questioned whether there was anything in the document to limit the use of the challenge course at night. Town Planner Beniamino confirmed the Town could make this a condition of its approval; however, all three parties must agree to it. He advised that he did not know how Salamander would feel about it; however, he did not believe the Potomac Conservancy would object.

Councilmember Snyder advised that he was not sure he was willing to make that a condition of the approval as it had little to do with the open space easement.

Councilmember Shea explained that her concern was noise related to the users of the challenge course.

Mr. Matheu advised Council that the idea was to offer a tree top canopy tour. He explained that part of that was an educational process. Mr. Matheu stressed that this would not be a “thrill course”. He advised that it would consist of five stations, some of which were relatively short. Mr. Matheu explained that there was no intention of putting users in a screaming situation.

Councilmember Shea expressed an understanding of the intentions; however, she explained that part of her job was to look at future use and changes. She further explained that she wanted to discuss that this was Salamander’s intention in an open session.

Town Planner Beniamino reminded Council that this was a use allowed in the open space easement. He reiterated that all three parties needed to agree to a change in the language; and, advised that it would need to be developed. Mr. Beniamino suggested the need to define the term “night” and to identify the enforcement action if Council imposed this condition. He advised Council that they would not be able to approve the amendment during this meeting with that condition.

Councilmember Snyder expressed concern about tying Salamander up for months while the three parties reviewed the change.

Councilmember Shea noted that she was simply asking what was in the document and whether there could be a limit. She advised that she was fine that this would be recorded in the meeting minutes and noted that the purpose has been stated. Ms. Shea expressed an assumption that Salamander’s intention was expressed through those statements.

Town Attorney Plowman advised Council that enforcing their intention would be difficult.

Town Planner Beniamino explained that the Town looked to the Potomac Conservancy to enforce the easement and reiterated that they reviewed it each year. He advised that it would be difficult to enforce this issue without language in the document.

Vote: Yes – Councilmembers Littleton, Murdock, Snyder and Stewart

No – N/A

Abstain: Councilmembers Kirk and Shea

Absent: Councilmember Hazard

(Mayor Davis did not vote as there was no tie to require her vote)

Public Presentations

Dan Quanbeck, of the Middleburg Charter School Committee, appeared before Council to offer them a status report on their application. He reported that in late January and early February, community meetings were held. Mr. Quanbeck advised that the first meeting was an informational one for perspective parents and the second was an official School Board Review Committee meeting. He noted that there was a great turnout for the second meeting, with over forty people present.

Mr. Quanbeck thanked those who attended the regular School Board meeting on February 11th and noted that both Mayor Davis and Councilmember Hazard spoke, with there being a total of sixteen speakers. He reported that later that evening, a motion to approve the charter was entered as an information item. Mr. Quanbeck advised that the School Board would hold another work session on February 24th. He further advised that the first opportunity for them to vote for approval was February 25th. Mr. Quanbeck noted that they must get a contract worked out; therefore, there was some question as to whether the School Board could vote on February 25th. He advised that once the vote of approval happened, and he was optimistic it would, the Charter School Committee could start hiring employees, with the school opening in August.

Mayor Davis questioned whether it was correct that the school must officially close and reopen. Mr. Quanbeck confirmed there would be a technical closing. He noted that the School Board would redistrict the boundaries so that any child who did not wish to attend the charter school would go to either Banneker or Aldie. Mr. Quanbeck explained that there would be no attendance zone for the charter school as their attendance zone would be the transportation zone.

Mayor Davis noted that Delegate Randy Minchew introduced a bill regarding charter schools. She opined that it would give priority to students within the charter school area as opposed to having them participate in a lottery to attend the school.

Town Administrator Semmes confirmed the bill did provide priority but only for current students and their siblings. She questioned what would occur if someone moved into the area.

Mr. Quanbeck confirmed the child could attend the charter school as long as it was not full. He noted, however, the need to change the law for the future.

Mayor Davis opined that priority should be given to local children.

Mr. Quanbeck reminded Council that currently a charter school must be open to the entire school division. He advised that he asked Senator Vogel and Delegate Minchew to look at an amendment to the State statute. Mr. Quanbeck opined that this should be an easy amendment to get through the General Assembly.

Town Administrator Semmes questioned whether Mr. Quanbeck had heard anything regarding the disposition of the school property. Mr. Quanbeck explained that those discussions have been delayed for now. He confirmed that it was their intention, if the Council was willing, to get the building into the Town's hands.

Discussion Items

Changes to Parking Meters/System

Town Administrator Semmes reminded Council that they had a memorandum from Chief Panebianco regarding the research he conducted and the options for parking meters. She noted that Chief Panebianco wanted to make it clear that he did not care one way or the other regarding the use of pay stations. Ms. Semmes reported that there was a company that had a meter that contained two meters in one head, which was another option. She advised Council that that option would cost approximately \$49,000, excluding installation and credit card capability. Ms. Semmes noted that if the Council wanted to remain with the current system but make the meters more reliable, the cost would be \$25,000. She advised that the Maintenance Supervisor believed he could do that installation himself.

Councilmember Snyder expressed concern that the pay stations looked out of character for Middleburg. Town Administrator Semmes noted that these types of pay stations were used in Old Town Alexandria. She opined that they would disappear visually if they were painted black. Ms. Semmes reminded Council that the pay stations would mean the Town would not have ninety poles, but rather would only have thirteen.

Councilmember Murdock advised that she was in favor of them because the sidewalks were so narrow. Councilmember Shea noted that they would make snow removal easier.

Mayor Davis opined that there were pros and cons to both options. She expressed concern that people would not want to walk to the pay station and then back to their car during inclement weather.

Councilmember Shea questioned whether the pay stations would be limited to certain spaces or whether a pay station could be used to pay for any space so that a motorist would not have to go back to their car.

Town Administrator Semmes explained that they must return to their car in order to put the paper receipt in the windshield. She noted that the amount of time that could be purchased could be limited to two hours.

Councilmember Murdock inquired as to the stations that would allow an individual to pay using their cell phone.

Town Administrator Semmes opined that this module could be added to the pay station. She suggested the Town needed something that could be upgraded. Ms. Semmes further suggested the Town secure a pay station and test it in a parking lot.

Mayor Davis suggested it be tested on a street that was used a lot so the Council could see what complaints were received. She noted the monthly maintenance fee and inquired as to what that entailed. Town Administrator Semmes explained that it covered the cost of the software, Wi-Fi access and the processing of the credit cards.

The Council held some discussion regarding the credit card systems and the maintenance of the meters. They agreed to have an industry representative and the Maintenance Supervisor attend a Council meeting so they could discuss this matter further. The Council noted the cost to maintain the existing meters, including batteries and staff time, as well as the loss of revenue due to broken meters. They asked the staff to determine whether there were other towns the same size as Middleburg that used pay stations. The Council further asked that they contact those towns to see how they felt about them.

Improvements to Pink Box Building

Economic Development Coordinator Pearson advised Council that Melanie Matthews has received approval for the Town to do the proposed work at the Pink Box. She reported that the staff would like to do the first phase, which would consist of repairing a large crack and hole in the wall behind the front door, repairing cracks in the walls and ceilings throughout the building, repainting, and sanding and refinishing the floors, as well as constructing new card racks. Ms. Pearson advised Council that the staff could keep the price under a certain amount to avoid issues with the Virginia Conflicts of Interest Act.

Councilmember Murdock advised that she would like to be able to plug in the Christmas tree; and, noted that this was an issue last year as it was not lit for the parade.

Town Administrator Semmes noted that the Leland Cypressess were in bad shape.

Councilmember Murdock advised that while she hated to use reserve funds, this was something the Town must do. She questioned whether the staff worked with the Pink Box Advisory Board on this project. Economic Development Coordinator Pearson confirmed she did and reported that they were happy with the proposal.

Mayor Davis questioned whether the Council was okay with the proposal. She further questioned whether they needed to vote on this item.

Town Administrator Semmes noted that the Pink Box money was separate; therefore, the staff wanted the Council's go ahead to do the project. She further noted that the amount was within her authority to approve.

Economic Development Coordinator Pearson noted that the Town Attorney was concerned that the cost estimate was over \$10,000, which was more than allowed under the Virginia Conflicts of Interest Act. She explained that Melmore (owned by Councilmember Littleton) provided the cost estimate. Ms. Pearson noted that Councilmember Hazard, who worked for Melmore, would be working on the project to repair the building and construct new shelving. She explained that because councilmembers could not do more than \$10,000 per year worth of business with their town without going through a competitive bid process, the Town would purchase the materials needed for the project in order to keep their costs under the \$10,000 threshold. Ms. Pearson explained that Melmore's costs would simply be for the labor. She advised, however, that the entire project would still be over \$10,000.

Councilmember Shea asked whether the staff checked with the State on the possible conflict of interest. Town Administrator Semmes advised Council that she and the Town Clerk reviewed the State statute. She confirmed there was a \$10,000 limit for a member of the governing body. Town Attorney Plowman confirmed that as long as the contract was under \$10,000, this was okay.

Economic Development Coordinator Pearson reiterated that the Town would purchase the supplies; therefore, what the Town paid Melmore would be well under \$10,000.

Town Administrator Semmes reminded Council that this was something that Councilmember Littleton was responsible for tracking. She advised Council that the purchase of goods and services from a councilmember was something that occurred in small communities and was not illegal.

Town Clerk North advised Council that a bill was under consideration by the General Assembly to reduce that threshold to \$5,000.

The Council agreed it was okay for the staff to proceed as proposed.

Councilmember Littleton noted, for the record, that he abstained from the discussion regarding this agenda item.

Closed Session – Appointment to Boards/Commissions and Property Acquisition

Vice Mayor Kirk moved, seconded by Councilmember Shea, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(1) and (3) pertaining to the discussion, consideration or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of the public and for the discussion or consideration of the acquisition of real property for a public purpose, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body. Vice Mayor Kirk

further moved, seconded by Councilmember Shea, that this matter be limited to (1) discussion of an appointment to the Planning Commission and (2) the acquisition of real property for a community purpose. Vice Mayor Kirk further moved, seconded by Councilmember Shea, that in addition to the Council, the following individuals be present during the first portion of the closed session: Angela K. Plowman, Martha Mason Semmes, Rhonda North and David Beniamino. Vice Mayor Kirk further moved, seconded by Councilmember Shea, that in addition to the Council, the following individuals be present during the second portion of the closed session: Angela K. Plowman, Martha Mason Semmes and David Beniamino. Vice Mayor Kirk further moved, seconded by Councilmember Shea, that the Council thereafter reconvene in open session for action as appropriate.

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

No – N/A

Abstain: N/A

Absent: Councilmember Hazard

(Mayor Davis did not vote as there was no tie to require her vote)

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.

Councilmember Murdock moved, seconded by Councilmember Snyder, that Council appoint H.H.Duval “Dev” Roszel to the Middleburg Planning Commission for a four-year term, said term to expire December 31, 2017.

Vote: Yes – Councilmembers Kirk, Littleton, Murdock, Snyder and Stewart

No – Councilmember Shea

Abstain: N/A

Absent: Councilmember Hazard

(Mayor Davis did not vote as there was no tie to require her vote)

There being no further business, a motion was made and approved to adjourn the meeting at 7:49 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk