



**MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes**



Thursday, March 12, 2015

PENDING APPROVAL

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

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

ABSENT: Mayor Betsy A. Davis
Councilmember Trowbridge Littleton

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on Thursday, March 12, 2015 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Thomas Hess, of Boy Scout Troop 2950, led Council and those attending in the Pledge of Allegiance to the flag.

Public Comment

Punkin Lee, a business owner in Middleburg, noted that during the recent Biz Buzz, the Economic Development Coordinator reported on the health issues being experienced by David Stewart. She reported that in order to assist the Stewart family, an account has been opened at the Middleburg Bank called "The David Fund". Ms. Lee advised that a Go Fund Me fund has also been set up for those who would like to donate. She noted that Mr. Stewart was in need of a heart transplant. Ms. Lee reminded Council that he was a Town native and resident and formerly served on the Town Council. She advised that he has put his house on the market and was in need of secondary insurance before he could get on the transplant list; therefore, he needed the town's support.

Philip Miller, a resident of Middleburg, reported that a national retail chain would be moving to Middleburg shortly, which was distressing news. He opined that the issue was not really this particular retailer but that the issue needed further discussion and investigation. Mr. Miller expressed concern that if national retailers started to come to Middleburg, it would be detrimental to the character of the town and to the small businesses that were the back bone of the economy. He opined that San Francisco has done a great job of preserving its historic neighborhoods and keeping formula retailers from certain neighborhoods or regulating how they could locate there. Mr. Miller recommended this type of regulation be looked into for Middleburg.

There being no further comments, Vice Mayor Kirk closed the public comment period.

Councilmember Murdock noted that after she heard that a retail store was coming to town, she visited the Town Office to find out the rules regarding them. She asked the Town Attorney to give the Council an abridged description of Dillon's Rule and to explain what the Council could and could not do.

Town Attorney Plowman explained that if the legislators in Richmond have not given the Council a specific power, it could not act any way it chose. She noted that the Council could always ask for a legislative change to provide Middleburg or any locality in the Commonwealth the ability to regulate something. Ms. Plowman explained that under Dillon's Rule, a governing body only had those powers expressly granted to it by the General Assembly. She advised that if there was ever any doubt as to whether a locality could do something, the decision was resolved against the governing body. Ms. Plowman reported that the Council could not regulate without the authority to do so. She explained that California was not a Dillon Rule state; therefore, its localities could do whatever they wanted unless there was something in their state code that said they could not. Ms. Plowman cited the example of taxes and explained that the Town could tax only because the General Assembly said it could. She further explained that it could not just make up its own taxes and tax people. Ms. Plowman reiterated that everything the Town did was governed by the General Assembly.

Councilmember Shea questioned whether having an economic development plan that identified the kinds of businesses a locality wanted could influence what a locality could or could not do.

Town Attorney Plowman advised that she would explore this. She suggested the plan may just be a guide and opined that a municipality could never restrict businesses. Ms. Plowman opined that, from what she understood to be the issue, the difference was that it was not that people did not want certain types of businesses; it was that they just didn't want them to be bigger types of what was allowed. She reported that there were long standing rules and litigation related to this issue going back to the 1920s when the A&P went national and put mom & pop stores out of business. Ms. Plowman advised that big box retailers have been fought by many jurisdictions and noted that jurisdictions could require them to go in certain areas as a result of their zoning ordinances; however, they could not outlaw them. She noted that California did not say that they could not go in, but rather gave them areas where they could locate. Ms. Plowman advised that Middleburg was small and did not have the space to identify streets on which a business could locate. She reiterated that it addressed them through zoning as best it could. Ms. Plowman noted that the HDRC governed architecture in town, which was some of what San Francisco did; therefore, that was already in place.

Councilmember Murdock opined that if McDonalds wanted to come to Middleburg, they could as long as they followed the Historic District rules and zoning regulations. Town Attorney Plowman confirmed they could. She cited the European McDonald's, which were not identifiable from the exterior.

Councilmember Hazard noted that this was not the first time this has happened in Middleburg. He further noted that part of the existing zoning regulations showed this and cited the example of drive-through restaurants, which were not allowed. Mr. Hazard advised that the former Town Attorney told the Town ten or twelve years ago that it could not outlaw chain stores but it could limit them. He noted that, at that time, the Town changed some of its regulations.

Vice Mayor Kirk questioned whether the Town could limit the size of a store by controlling the size of the building or area within it that they could occupy. Town Attorney Plowman expressed suspicion that the Town already had regulations that would not allow for an eighty thousand square foot box retailer. She noted that this was done through zoning.

Vice Mayor Kirk opined that the Council should approach the General Assembly to get legislation that would allow it to regulate types of businesses.

Town Attorney Plowman advised Council that there were equal protection issues and commerce clause issues as well; therefore, this was not just a state issue. She further advised that it was a federal issue. Ms. Plowman noted that this has been litigated a lot over the years. Councilmember Hazard noted that San Francisco was still in litigation.

Public Hearing

Zoning Map Amendment 14-03 (continued) – Ordinance to amend proffers associated with conditionally zoned land – 500 North Pendleton Street – Salamander Development, LLC

Town Planner Moore reported that a lot of progress has been made since last month, in particular with regard to the issue of public versus private streets. He reminded Council that the original proffer application contained two substantive elements. Mr. Moore noted that one element dealt with the street connection being relocated to the existing right-of-way at Reed Street, which remained as a proffer amendment. He advised that the second element was that the street network within the residential districts and the MUV district would be privately owned and maintained. Mr. Moore reminded Council that the applicant had stated that they wanted this for two reasons – maintenance and design. He advised that with the assistance of Commonwealth Transportation Board Member Scott Kasprovicz, he was able to get information to VDOT for an expedited review. Mr. Moore reported that two meetings were held within the last month between the applicant and VDOT, the first of which the Town Administrator attended. He advised that subsequent to those meetings, he was able to participate in a conference call that summarized the meetings. Mr. Moore noted that the applicant has provided a key point memorandum of the discussions from the second meeting. He opined that the gist of the memo was that it looked like Salamander could accomplish what it wanted design wise, with a few minor alterations. Mr. Moore advised that it also looked like they would be able to enter into a private maintenance agreement with VDOT to allow the HOA to do maintenance on the road network even though it would be publicly owned. He explained that if the HOA was not satisfied with snow removal or pot hole repair, it could enter into a maintenance agreement to do that work itself.

Town Planner Moore advised that, as a result, the Town has received an updated proffer statement dated March 6th. He noted that the Council also had an updated plan. Mr. Moore reminded Council that previously, the plan included in the proffers zoned into the one area that showed the relocation of the connector road to Reed Street. He advised that Salamander has provided a larger view of this plan and reported that it was now part of the application and referenced in the proffer statement. Mr. Moore noted that the project would need to be in substantial conformance with it, although some of the design elements may need to shift when the project went to the subdivision stage.

Town Planner Moore advised that this would be a public road network, with an exception in the R-3 area between lots nine and ten. He explained that the two drives that connect from the residential areas to the resort would be private connections. Mr. Moore advised Council that much of what was in the proffer statement that they saw last month was removed because of the change back to public streets. He noted that the concerns about the enforcement of traffic violations were removed as the streets would now be public. Mr. Moore reported that Salamander was still including a proffer that stated that they would not gate or otherwise obstruct access into the residential area from the south.

He opined that the increased flexibility in design that VDOT offered would preclude Salamander from going to VDOT to ask that it be gated. Mr. Moore advised that this went back to the concept that this development should read as an extension of the town. He noted that the proffers would not preclude Salamander from gating the road between the residential area and the resort and suggested this was one idea to possibly preclude cut-through traffic between the resort and the Ridgeview Subdivision. He noted that he was supportive of the inclusion of this in the proffer statement.

Town Planner Moore advised Council that the staff was still working on items with the applicant, such as the correction of typographical errors in the March 6th proffer statement; therefore, he anticipated the Council would see another version. He opined that he and the Town Attorney were getting close on their final review and would pass their comments onto the applicant as soon as tomorrow.

Town Planner Moore noted paragraph twelve on page two of the proffers. He advised that there was a difference between that and the existing proffers; and, noted that the existing proffers specifically stated "public road" on the proffered plan. Mr. Moore advised that the proposed version did not state that the roads would be one hundred percent public roads; however, the proffers did not request private streets either. He noted that the original intent of the applicant was to enter into a MOU with VDOT that could be executed and referenced in the proffers to solidify the public road issue; however, VDOT could not enter into a MOU. Mr. Moore advised Council that VDOT could not tell them that the roads would one hundred percent be public roads until it saw and reviewed the construction plans. He reported that a VDOT representative did echo the encouragement that he was conveying to the Council that this did look like something that could be accomplished. Mr. Moore opined that the language was good and advised that while normally the words "shall use its best efforts" could be a red flag, he liked having it in the proffers rather than not having language that talked about public versus private roads. He explained that this would preclude Salamander from saying "we tried it and it could not happen". Mr. Moore advised that if they hit a hurdle they could not clear, Salamander come to the Council to request a private street, to which the staff would then say "show us your progress". He stressed that nothing would obligate the Council to approve private streets in the future. Mr. Moore advised that the staff was not trying to preclude Salamander from requesting them if they did run into a hurdle that they could not clear. He noted that the proffers did not guarantee the roads would be public; however, he opined that they were going down the right road.

Town Planner Moore acknowledged that this was a different design. He advised that the Planning Commission reviewed the concept plan that Council saw last month and gave it a soft endorsement. Mr. Moore noted, however, that it was something that must work through the process at the subdivision stage. He advised that he had hoped when he saw an early iteration of the plan, to present it to the Commission last week; however, that meeting was cancelled due to inclement weather. Mr. Moore expressed hope to present it to them during their March 23rd meeting. He advised Council that he would not be able to include any information in their agenda packet about the Commission's deliberations; however, he would give them a report during their work session. Mr. Moore opined that the inclusion of the plan was a good thing as it was not a proffered element at first. He reminded Council that other than that, the Commission's main concern had to do with the language on private streets, which has been removed. Mr. Moore opined that the Planning Commission would continue their favorable recommendation.

Councilmember Shea questioned whether it was necessary to open the Reed Street extension as a road rather than leave it as a pedestrian way. Town Planner Moore advised that this connection was necessary based on a traffic impact analysis that was done in 2007. He further advised that the analysis fully anticipated that there would be two access points to Stonewall Avenue in addition to the other networks. Mr. Moore noted that absent an updated analysis stating otherwise, the road connection was necessary. He advised Council that he has informed the applicant of the need for an updated traffic impact analysis at the subdivision stage. Mr. Moore noted that this issue could be revisited if the analysis indicated it was not needed.

Councilmember Shea noted that she was not suggesting that the road connection not be there – she was only suggesting it be a pedestrian access for a time.

Councilmember Murdock noted that she was told that part of the Pendleton Street road network would still be private. She questioned whether it would become part of a VDOT road. Town Planner Moore confirmed it should be able to become part of a VDOT road. He explained that the issue was that if a public road connected to a private road and there was no loop to get out, VDOT wanted a turn around. Mr. Moore noted that this did not happen with the construction at Pendleton Street. He advised that he would look for that portion of the road stubbing up to roads A-1 and A-2 to be properly dedicated.

Councilmember Murdock noted that she liked that the proffers referenced four-way stops, particularly the one at Pendleton and Marshall Streets. She opined that it was needed. Town Planner Moore advised that the staff would revisit the options and noted that this was requested at one time. He reminded Council that a four-way intersection at Pendleton and Marshall was included in the proffers subject to VDOT's approval and noted that VDOT said the intersection would not meet the warrants. Mr. Moore advised that he had some ideas on ways to represent that request. He noted that the original proffers also included a four-way intersection at the Community Center's property and Pickering Street and advised that this has been replaced with a proffer for four-way intersections at Chestnut and Reed Streets.

Councilmember Hazard questioned whether the four-way intersection was something with which Mr. Kasproicz could help.

Councilmember Shea questioned whether the staff has addressed changing the existing stop sign at Stonewall Avenue and Chestnut Street so the Chestnut Street motorists must stop. Town Planner Moore advised that he would look into that.

Stephen Plescow, of St. Mawes, appeared before Council representing Salamander Development, LLC. He advised that he wanted to provide a brief recap of their progress since the last Council meeting. Mr. Plescow advised that during that meeting, they listened to the concerns of the Council, staff and public and opined that they have resolved the outstanding issues. He reported that they have met with VDOT to discuss the road design and maintenance issues. Mr. Plescow advised that based on the agreement and understanding reached with VDOT, Salamander was comfortable dropping their request for private roads and would work closely with VDOT to achieve their goals, which were to have a great plan, to be responsive to the Town's ordinances and to have a good level of maintenance. He noted that they would use their best efforts and were taking this matter very seriously. Mr. Plescow advised Council that they have provided the Town Attorney and Town Planner with additional title information that clearly documented that the Town owned the Reed Street right-of-way. He noted that they have addressed the comment about using the Community Center's land for an access road by securing a letter from the Community Center's Board of Directors clearly stating that they were not interested in their selling property or working with Salamander on an easement agreement. Mr. Plescow opined that the Town Planner had a great suggestion regarding the two road connections to the resort, which was to make them private. He advised that they were not trying to create a gated community; however, this would address the concern that Salamander could not terminate a VDOT road into a private road without a turn around. Mr. Plescow opined that it would also discourage cut through traffic. He advised that they would be happy to go back to the Planning Commission and opined that they had more than a soft endorsement. Mr. Plescow noted that Salamander has worked with the Commission since last fall and received a unanimous vote of support from them. He reiterated that they were happy to present this to them again; however, he believed they would be happy to endorse the new design with public roads. Mr. Plescow opined that they have worked hard to resolve the issues and were ready for the final review.

Prem Devadas, of Salamander Development, explained that they wanted to address the concerns that were raised at the last meeting and those voiced by the Council. He advised Council that they have moved forward with the hope that there were no more issues that needed to be discussed. Mr. Devadas advised that if there were, Salamander would like to hear them during this meeting so they would have time to address them. He opined that they have now satisfied the major concerns. Mr. Devadas advised that they were delighted that they were able to do public roads and noted that although they had great concerns, they have been able to get to where they wanted to go.

Mark Thompson, a resident on Stonewall Avenue, advised Council that he was located close to the proposed connection to Chestnut Street. He noted that he only recently learned of this process. Mr. Thompson suggested the Council, Planning Commission and applicant consider moving the proposed roundabout in a more northeasterly direction so it would be further from Stonewall Avenue. He opined that this would be a fairer positioning of the road system as it would move a significant amount of traffic away from the four or five properties that were located on the western end of Stonewall Avenue. Mr. Thompson noted that he looked at the generalized development plan from 2007, which depicted the road network well to the north of the rear property line and provided a larger buffer between the rear roads and the roundabout. He noted the natural buffer that occurred between the R-1 and R-3 areas and advised that it has been suggested that if the road was located as now proposed, it would not impact the buffer. Mr. Thompson suggested that moving the roundabout to the north would do the same. He noted that this would produce no material loss in net density and advised that the road would simply be moved around the cul-de-sac. Mr. Thompson asked that the Council favorably consider asking the applicant to do that. He noted that the proposed public road network included concrete curb and gutter and suggested that those were used in an urban environment. Mr. Thompson opined that the Council would be hard pressed to find them in the community west of Route 50 and noted that the typical road sections were pavement with gravel shoulders. He opined that concrete gutters were a very modern design and suggested that while they had a purpose, they were “not Middleburg”. Mr. Thompson asked that the Council consider this as well.

Patty Thomas, a resident of Chestnut Street, noted that her concerns were all about street design and safety. She encouraged the Council to have an independent traffic impact analysis done before voting on the proffer amendments. Ms. Thomas asked whether the Council considered that the street connections at Chestnut and Reed Streets could be limited to pedestrian, bicycle and emergency vehicles only. She noted that during the last meeting, the applicant’s representative twice stated on the record that it was not their wish to use those connections but rather was the wish of the Council since the 2004 visioning committee meetings. Ms. Thomas noted that this was because the Town, at that point, envisioned that the project would be fashioned in a way to mimic the old neighborhoods, would be laid out in the same grid pattern and would be an extension of the existing neighborhoods. She opined that the proposal did not conform to or enhance the existing Ridgeview neighborhood as it was different. Ms. Thomas expressed concern about the influx of new traffic onto the old streets and noted that Ridgeview’s streets were essentially a thirty foot right-of-way with five foot strips on each side. She stressed that they contained a much smaller paved surface area. Ms. Thomas noted the revised proffer plat, which included schematics showing typical streets, and advised that regardless of which way they were built, the new streets would channel into substandard, older streets where only one-way traffic was possible. She noted that there were very few locations where two cars could safely pass. Ms. Thomas asked that the proffers be changed so the connections could only be used for pedestrian and bicycle traffic and by emergency vehicles.

Philip Boyle, 410 Stonewall Avenue, noted that his property was located beside the proposed right-of-way. He expressed concern regarding the impact of the extra traffic, as well as the noise that would be generated by traffic using the new road. Mr. Boyle advised that he would like to know what the conditions would be like there, in particular for noise abatement.

Julie Martin, a resident, questioned what happened to the grid plan that was proposed a long time ago. She opined that even with public roads, this still looked like a private community.

Mr. Plescow noted that the Town Planner provided him with a copy of Mr. Thompson's sketch and advised that they would look at it with the Planning Commission. He reminded Council that the intent of the current design was to protect the tree hedge row and opined that it would provide a nice buffer between the R-1 and R-3 lots. Mr. Plescow noted that they have tried to provide a buffer that was not in the old concept plan between the lots on Stonewall Avenue and the new ones. He reminded Council that originally those lots all abutted; however, the plans now show a thirty-five to fifty foot buffer, which he hoped would help mitigate some concerns. Mr. Plescow advised that as to the concrete curb and gutter, this was a VDOT standard that must be followed for public roads. He opined that most of the roads in Middleburg contained concrete curb and gutter. Mr. Plescow advised that as to Ms. Thomas' comments, Salamander would perform a new traffic study when it submitted the preliminary plat for the project. He noted that Salamander would be happy to run an analysis that showed the Chestnut and/or Reed Street connections as being used for emergency vehicles, bicycles or pedestrians only. Mr. Plescow advised that as to Mr. Boyle's concerns related to noise, Salamander would follow the noise ordinance and was not asking for any exceptions. He noted that as to Ms. Martin's question related to the grid plan that was in the original plan, Salamander was trying to address new environmental standards and preserve the trees. Mr. Plescow advised that Salamander was trying to do its best to meet the Town's ordinances and expressed his belief that this development would "feel like Middleburg".

Mr. Devadas noted that he was here in 2004 when another Comprehensive Plan existed. He further noted that because of their suggestions, it was changed. Mr. Devadas reminded Council that, originally, the plan was for a cluster of twenty-nine homes, which were in anything but a grid, to be located at the terminus of Chestnut Street. He noted that it was unlike anything else in town. Mr. Devadas reminded Council that the remainder of the by-right development was to consist of twenty homes on lots as large as five acres and noted that there was no grid pattern for that development. He opined that through their efforts, there were improvements and advised that he wanted to make sure that was not lost. Mr. Devadas advised that he also wanted to confirm Ms. Thomas' statement that he did say twice that Salamander was not trying to push the roads but rather respected the opinion of the Town, through the studies that took place in 2004, that there should be connections for traffic's sake. He acknowledged Councilmember Shea's idea of Reed Street being a bike/pedestrian path and advised that he would urge everyone to look at the traffic study in the hope that it would not be required to be a traffic road. Mr. Devadas advised that Salamander would be agreeable that the connection could be a bike path/walking trail to bring people into the community.

Mr. Plescow asked that this be dealt with at the preliminary plat stage when they would have a finer analysis of the proposed road layout. He noted the need for VDOT's review and advised that they would want to see a more detailed plan.

Mr. Devadas questioned whether it would be a requirement to construct the road upon the approval of the Council. Mr. Plescow confirmed it would as it would be proffered. He noted that it would take an action by the Council to change it. Mr. Plescow suggested Salamander send the preliminary plat to the Planning Commission and perform the traffic study. He noted that they could run scenarios that could then be presented to the Planning Commission and Council. Mr. Plescow suggested that if the Council then wanted to take action, Salamander could deal with it at that time.

Councilmember Hazard questioned whether this would also have to go to VDOT for their review. Mr. Plescow confirmed it would require their approval. He advised that he also wanted to make sure the Fire Department was comfortable with what was being proposed and wanted to make sure Salamander addressed life safety issues. Mr. Plescow noted that Loudoun County's staff was encouraging Salamander to keep multiple road connections to help distribute traffic and help with life safety.

Councilmember Murdock noted that when the Council talked about this a long time ago, she could not imagine the residents of the Salamander development all using Pendleton Street as the only entrance. She further noted that the thought was to require the distribution of the traffic.

Mr. Devadas noted that this was initially based upon the visioning sessions that were geared toward the community and retaining the feel of the walkability of the town. He advised that he did not recall that the fire department submitted a formal opinion at that time; however, he noted that this was very important and advised that they would consider it.

Mr. Plescow suggested that in looking at the original concept plan, the units were clustered around the Chestnut Street entrance. He noted that the new plan spread them out. Mr. Plescow further noted that the new plan would help to distribute the traffic and would not focus people on Chestnut Street.

There being no further public comment, Vice Mayor Kirk closed the public hearing.

Vice Mayor Kirk noted that she reminded people about the twenty-nine houses at the end of Chestnut Street. She advised that she talked to a former Council member who reminded her that the houses were moved because of the natural terrain. Ms. Kirk noted that houses were shown in front of houses on the proposed plan. Town Planner Moore explained that those were flag lots, which were large lots tucked in behind other lots.

Vice Mayor Kirk questioned how an individual would access a back lot. Town Administrator Semmes advised that there would be a shared driveway.

Councilmember Murdock asked that Salamander look at Mr. Thompson's proposal. Mr. Plescow suggested they do so at the Planning Commission level. He noted that there were several reasons for the proposed location including topography and the preservation of the tree line. Mr. Plescow advised that they also had a buffer that they were going to landscape. He noted that another reason for the location was that the original plan called for the road to come all the way through based on the original rezoning. Mr. Plescow suggested that if the Council wanted to review the necessity of the connection, they could do so when they performed the study.

Mr. Devadas advised that aside from the existing landscape plan, Salamander was happy to work with Mr. Thompson to see what else could be done to provide a buffer.

Councilmember Shea noted that she spoke with Messrs. Plescow and Devadas earlier in the week to review their application. She advised that one of the things that she asked was that Salamander plan on coming to the Council on a regular basis, such as quarterly, to report on what they were doing.

Councilmember Hazard questioned whether the Reed Street extension could be made a pedestrian access until a certain number of houses were sold. Mr. Devadas advised that if the Town decided to do so, Salamander would be agreeable. Mr. Plescow noted that the traffic studies that were done with the original rezoning were based upon a MUV District that contained thirty thousand square feet of commercial development, a new Town Hall, sixty residences and a restaurant and noted that this would generate a lot of traffic. He opined that the R-1 and R-3 areas would not have a lot of traffic and opined that North Pendleton Street could handle it. Mr. Plescow advised that this, however, tipped over when the MUV District traffic was added.

Councilmember Hazard suggested the Council revisit the analysis for the MUV District when a plan was submitted. Mr. Plescow opined that it was prudent to not take the road connections off completely as they were valuable to have for life safety. He noted that they were essential for pedestrian and bike traffic connections and should not go away entirely.

Councilmember Scheps noted Mr. Thompson's point related to curb and gutter. He questioned whether Salamander could work with VDOT on that issue. Mr. Plescow confirmed that they could ask. He noted, however, that the houses in the R-3 neighborhood were closer together; therefore, curb and gutter may be needed. Mr. Plescow suggested that in the R-1 neighborhood, Salamander could ask VDOT whether the use of an open ditch would be an option.

Councilmember Shea noted that one of the things that she and Salamander talked about in their meeting was that Salamander must treat its storm water before releasing it. She questioned whether this could occur through the use of an open ditch. Mr. Plescow confirmed it could and noted that they were encouraged in the new storm water management regulations. He explained that the idea was to get the water off the pavement as quickly as possible and into green areas where it could percolate and filter out. Mr. Plescow noted that the goal was to protect the Chesapeake Bay, which was why Salamander must pretreat the water and could not put it directly into a stream. He advised that they must filter it and have green swales for the R-1 area. Mr. Plescow noted that the R-3 area naturally drained to a stream and the water treatment plant. He advised that they were proposing to construct a storm water management pond as a backstop measure.

Vice Mayor Kirk questioned whether there were any concerns that the housing may impact the resort due to its close proximity. Mr. Devadas confirmed there was not. He noted that while the houses appeared to be close to the resort, in reality they would be set back. Mr. Devadas advised that this would be a big part of the architectural challenge. He noted that they would work with the HDRC and reminded Council that, ultimately, the idea was to make it look like they fit with the community.

Public Presentations

Dave Quanbeck, President of the Middleburg Community Charter School's Board of Directors, appeared before Council to give them a progress report on the school. He noted that they were winding up their third quarter this week and were holding their third LEO night this evening. Mr. Quanbeck reported that they would begin their spring intersession in two weeks and anticipated that two-thirds of their students would participate. He advised that overall, they were pleased with the school's progress to date and noted that they have performed extensive surveys that showed high student and parent satisfaction. Mr. Quanbeck reported that they anticipated a ninety percent retention rate next year. He reminded Council that attendance at the charter school was by choice; therefore, attracting and retaining students was imperative. Mr. Quanbeck advised that the Board has engaged an independent expert in Virginia elementary education who would visit the school quarterly to do an evaluation of their progress. He explained that she would look at student records and testing and advised that the Board did not want to assume it was doing a good job. Mr. Quanbeck advised that overall, she was very impressed with how the school was operating. He noted that they just completed a visioning process that was led by Councilmember Hazard in order to gather extensive input. Mr. Quanbeck advised that people were invited to look at the possibilities in elementary education and help determine the school's direction in the future. He reported that they had some working sessions with teachers and as a result, picked up a few ideas for next year, which gave the teachers a way to plan their schedule.

Mr. Quanbeck noted that the charter school must have a management committee, as required in the State Code, which would be composed of the staff, administrators, teachers, parents and members of the community. He advised that in the beginning, only the Board of Directors existed; however, they were now handing off the responsibilities for governing the school to that independent board.

Mr. Quanbeck reported that enrollment was now at one hundred nine students and noted that there were ten fifth graders who would move onto the sixth grade next year. He advised that enrollment for the coming year was projected to be one hundred twenty-two students, which was the number at which

they were setting their lottery. Mr. Quanbeck reported that ninety-two students would return and nine siblings of current students would be coming into kindergarten, which would leave twenty-one openings in the school, for which they had seventy-nine applications. He noted that the application deadline was March 15th, with the lottery taking place on March 17th.

Councilmember Shea questioned whether Middleburg students received preference when it came to enrollment. Mr. Quanbeck advised that half of the openings were for Middleburg students. He opined that there would be four openings for kindergarten students; however, he noted that parents would often apply and then drop out. Mr. Quanbeck advised that just because a student did not get in right way, this did not mean they would not as there may be movement at the opening of the school year.

Councilmember Shea questioned whether there was any negative feedback as the result of the article in the *Loudoun Times Mirror*. Mr. Quanbeck noted that even though the story was fed to all of the newspapers, only one paper published anything. He opined that there was a lot of misinformation in the article and the opinions of a few people. Mr. Quanbeck noted that the future would determine if there was any truth to the rumors.

Vice Mayor Kirk questioned whether the Charter School was keeping most of its teachers. Mr. Quanbeck confirmed it was keeping the majority. He explained that for charter schools, even first year teachers had the opportunity to leave. Mr. Quanbeck noted that most of the teachers at Loudoun County were locked in on probation. He explained that teachers had the opportunity, by signing the D Staff List, to transfer. Mr. Quanbeck advised that the teachers could look around to see what was available and still come back and noted that it was in their interest to look around. He reported that they have two “super teachers” who have already set up their schedule for next year.

Councilmember Snyder noted that there have been conversations about having the Town take over ownership of the school building from the County. He questioned whether this would help the Charter School. Mr. Quanbeck noted that the School Board has been a good landlord. He reminded Council that they were currently on a three year contract and opined that as long as they had a full school of satisfied parents, the School Board would be hard pressed not to renew the lease; however, he noted that it still required their vote. Mr. Quanbeck noted that the School Board provided the past fifteen years’ worth of capital expenditures and reported that they spent an average of \$60,000 per year on maintenance, mostly on large items. He advised that it was not clear whether the Charter School would have access to the capital funds and noted that those funds came from bonds that the taxpayers voted upon. Mr. Quanbeck opined that they should still get a share of the bond funds.

Councilmember Snyder suggested the Council should nail down ownership of the property so this issue would be less questionable in the future. Mr. Quanbeck agreed it made sense to look at the issue and noted that the members of the School Board were amenable to the transfer when the subject was first broached.

Councilmember Hazard advised Council that it has been great to work with Mr. Quanbeck and the members of the staff. He reported that they met on March 9th to talk about visioning and noted that there were one hundred students and more than sixty parents in the audience.

Approval of Minutes

Councilmember Snyder moved, seconded by Councilmember Hazard, that Council approve the February 12, 2015 Regular Meeting and February 26, 2015 Work Session Meeting Minutes as amended.

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

No – N/A

Abstain: N/A

Absent: Mayor Davis and Councilmember Littleton

Staff Reports

Vice Mayor Kirk thanked **Stuart Will, of IES**, for responding so quickly to the frozen meter complaints. Mr. Will noted that if he defrosted the meter as soon as possible, he could save it. He reported that there were approximately a dozen frozen meters during the recent cold snap.

Town Administrator Semmes reported that she was working with Terry Inboden and the Utility Committee on the draft Utility Fund budget. She further reported that she attended the HDRC meeting to talk about their budget priorities. Ms. Semmes reminded Council of the need for a condition study of the Asbury Church, of the need to update the Historic District Survey and of the need to update the Historic District Guidelines. She reported that she received guidance from the HDRC on their priorities.

Vice Mayor Kirk questioned whether any additions were needed to the budget due to the Asbury Church. Town Administrator Semmes confirmed there were. She advised that she wanted to put something in next year's budget; however, she did not know how much at this time.

Councilmember Murdock inquired as to the date for Arbor Day. **Economic Development Coordinator Pearson** reported that it would be held on April 25th at the Middleburg Charter School.

Councilmember Shea asked that the staff or contractor come in on the weekends to address the Liberty Street Restroom issue. She reported that on Saturday, the restrooms overflowed and on Sunday, they were locked, which angered the tourists.

Town Administrator Semmes reported that the Facilities & Maintenance Supervisor was working on a budget estimate to update the plumbing so it would be commercial grade rather than residential grade.

Councilmember Scheps questioned whether the break in the weather would help the Marshall/Madison Street Project. Town Planner Moore expressed frustration with the contractor. He advised that it did not help that the primary point of contact for providing the necessary documentation has left their company. Mr. Moore reported that a meeting was scheduled in the morning with the contractor, at which time, he hoped to receive a revised project schedule. He opined that with the weather as it was, the contractor should be working on the project.

Councilmember Murdock noted that the turning radius was required to be fifty feet so it could accommodate the biggest trailer that would travel through that intersection. She advised that it was almost impossible for those trailers to turn elsewhere. Ms. Murdock noted that she, the Police Chief and others would test the radius. She stressed that the intersection must be open for the Spring Races as the race traffic could not travel down Route 611. Ms. Murdock advised that if this intersection was closed during the races, the only way to get to them would be east of the traffic light. She opined that this may not work due to that turn radius. Ms. Murdock asked the staff to push the contractor every day. She noted that the race organizers would attempt to find an alternative route; however, she opined that it would be difficult.

Vice Mayor Kirk reported that she tried to call the Town Office one day, not realizing it was a holiday. She noted that she then called the Facilities & Maintenance Supervisor who told her it was a holiday. Ms. Kirk suggested that when the office was closed for a holiday that the phone message indicate this.

Vice Mayor Kirk questioned whether the Bluemont Concerts were looking to move to the Middleburg Elementary School. Economic Development Coordinator Pearson confirmed they were looking at other options. Councilmember Snyder explained that there were scheduling conflicts at the Community Center due to the Fourth of July event and a wedding. He advised that they were trying to figure out what made the most sense for the Town and Bluemont.

Councilmember Shea inquired as to the number of individuals who received the Friday E-Mail Blasts. Economic Development Coordinator Pearson confirmed they were received by almost nine hundred individuals. She noted that the Town's Facebook page picked up a large number as well.

Economic Development Coordinator Pearson reported that the David Stewart Go Fund Me fundraiser has raised \$1,825 to date. She further reported that during the Biz Buzz, she heard some nice compliments about the Facilities & Maintenance Supervisor, as well as the snow removal contractor. Ms. Pearson noted that there were a lot of new people at the Biz Buzz. She advised that next month's meeting would be held at the Boxwood Winery.

Town Planner Moore reported that the Planning Commission has not been able to meet recently due to inclement weather. He further reported that they would hold three public hearings in March, which he would discuss with Council next month. Mr. Moore advised that the HDRC's March meeting was held last night and reported that the Trotters Perk Bistro sign was approved, the Above Green sign was conditionally approved, the Remhugh request to change windows was denied and the associated J McLaughlin sign request was tabled at the applicant's request. He noted that the architect who originally designed the building was the applicant's representative for the window application; therefore, he was not surprised that it did not receive a favorable vote. Mr. Moore reported that a denial was not normal for the HDRC and noted that they usually worked to find an alternate solution.

Councilmember Shea opined that the building that Dr. Jackson's offices were located in was called the "Middleburg Professional Center". She noted that this was also the name of Coe Eldredge's building on The Plains Road. Town Planner Moore advised Council that this was the name of Mr. Eldredge's building based upon the approved site plan. He further advised that he would look into this. Mr. Moore suggested that if Mr. Eldredge was not marketing his building, he could reach out to him about changing the name. Councilmember Snyder suggested it may be less confusing to use the street name.

Chief of Police Panebianco reported that the Facilities & Maintenance Supervisor did an excellent job during the recent snow event, as did his staff. He advised that while he has not been publicly announcing it before it happened, there have been a lot of VIPs, such as congressman, at the Salamander Resort. Chief Panebianco noted that the Police Department was working closely with the different agencies that provided them with protection.

Councilmember Shea noted that she recently heard complaints about motorists who were not able to use Salamander's road. She questioned whether this coincided with some of those visits. Chief Panebianco confirmed it did not. He advised that he did drive down there with Officer Fadely, who worked closely with the Fire Department, to look at the situation. He explained that the question was whether the Fire Department could get a truck in there, which they could, in determining whether the Police Department could say that the vehicles must be moved.

Councilmember Shea reported that she was told that motorists were turned around when they tried to come through Salamander because the intersection would not allow them to go west. Chief Panebianco noted that he had not heard that and could not provide an answer.

Councilmember Shea noted that a few months ago, the Council talked about having a special event permit; however, they decided to instead ask the Chief to talk to the businesses. She questioned whether he received that information. Chief Panebianco noted that he may have. He advised Council that he had a lot waiting for him when he returned and suggested it may have been overlooked. Chief Panebianco advised that if he could get the information again, he would address it. Town Clerk North advised Council that she would send Chief Panebianco the minutes from that meeting.

Town Attorney Plowman reported that she has been in touch with Delegate Minchew about providing the Council with a legislative summary of the General Assembly session and noted that it has been scheduled for the March work session.

Action Items (non-public hearing related)

Council Approval – Arbor Day Proclamation

Councilmember Murdock moved, seconded by Councilmember Snyder, that Council adopt a proclamation declaring April 25, 2015 as Arbor Day in the Town of Middleburg; and, urging all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

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

No – N/A

Abstain: N/A

Absent: Mayor Davis and Councilmember Littleton

Discussion Items

Zoning Map Amendment 14-03 – Ordinance to amend proffers associated with conditionally zoned land–500 North Pendleton Street–Salamander Development, LLC

Councilmember Snyder suggested this discussion be deferred to another meeting when the Council had additional information to discuss. Councilmember Shea noted that the Town Planner indicated that he was taking the amendments to the Planning Commission. She opined that until the Council heard from the Commission, it could not take action.

Town Planner Moore advised Council that this item could potentially return, if there were no major changes to the plan or proffers, during the work session. He noted, however, that when the Commission got into a discussion of making the road connection(s) to Stonewall Avenue a bike/pedestrian/emergency access only, this would require the applicant to revise the proffers and plan to reflect this as an option. Mr. Moore advised that this could mean they would be looking at it during their April meeting.

Councilmember Hazard questioned whether this could be handled as a part of the site plan. Town Planner Moore confirmed it could; however, he noted that it would require a proffer amendment as well. He advised that he could work with the applicant to make that an option. Mr. Moore further advised that if this was pursued, the vote could not be taken at the work session as it would require a new proffer and review by the staff. He reiterated that if the changes in the proffers involved nothing other than typos and minor issues that have already been given to the applicant, the Council could take action during the work session. He advised that based on Council’s discussions this evening, in particular with regard to the road connections, because the plan and proffers did not make that an option, a subsequent proffer revision would be required.

Vice Mayor Kirk suggested the Council needed to think carefully about whether it wanted the connections to be roads or pedestrian accesses.

Town Planner Moore advised that from a planner's perspective, he had grave concerns about those suggestions. He further advised that he did not see any possibility for getting approval to eliminate both. Mr. Moore suggested that if one was eliminated, it would put more stress on the remaining connection. He noted that there was a comment about taking both away and reiterated that he did not see that as a possibility. Mr. Moore reminded Council that Loudoun County had already weighed in on the proffers and would be opposed to the elimination of either connection due to the stress on the other road connections. He advised Council that he would talk with the applicant about any changes they may want to make.

Mr. Plescow advised Council that Salamander did not want to make any changes. He reminded them that they must do a traffic study to do anything, which VDOT must review. Mr. Plescow advised that VDOT would not look at their plan until they did more engineering; however, they would not do more engineering until they worked with the Planning Commission to work out the details of the plan. He opined that this would be a long process and noted that they must also work with the HDRC. Mr. Plescow suggested they had time to revisit this issue and advised that they were ready to go with this amendment.

Councilmember Scheps suggested this be done during the work session.

Councilmember Murdock noted that the staff report indicated that the staff wanted time for their review and the Commission's review and to prepare the final ordinance. She questioned what was meant by "the final ordinance". Town Planner Moore explained that the proffer amendment must be done through an ordinance. He noted that he had already prepared a draft and advised that the final version could be prepared if there were no substantive changes to the proffers.

Vice Mayor Kirk asked the staff to aim for that schedule. She noted that if there were last minute changes, the staff needed time to study them.

Information Items

Town Clerk North distributed copies of a letter that was placed on her desk from a citizen regarding chain stores.

Closed Session – (1) Appointment to EDAC and (2) Personnel Matter

Councilmember Shea moved, seconded by Councilmember Hazard, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(1) 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 body. Councilmember Shea further moved, seconded by Councilmember Hazard, that these matters be limited to (1) a discussion of appointments to the Economic Development Advisory Committee and (2) a discussion of a personnel matter involving the Chief of Police. Councilmember Shea further moved, seconded by Councilmember Hazard, that in addition to the Council, the following individuals be present during the closed session: Martha Semmes and Cindy Pearson for the first part and Chief Panebianco for the second part. Councilmember Shea further moved, seconded by Councilmember Hazard, that the Council thereafter reconvene in open session for action as appropriate.

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

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

Councilmember Snyder moved, seconded by Councilmember Murdock, that Council authorize the Mayor, Town Administrator and Town Attorney to enter into a contract as proposed with the Chief of Police.

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

After some discussion, the Council agreed to make the EDAC appointments during their next meeting.

There being no further business, Vice Mayor Kirk declared the meeting adjourned at 8:03 p.m.

APPROVED:

Darlene Kirk, VICE MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk