



MIDDLEBURG TOWN COUNCIL Regular Monthly Meeting Minutes



September 10, 2015

PRESENT: Mayor Betsy A. Davis
Vice Mayor C. Darlene Kirk
Councilmember Kevin Hazard
Councilmember Trowbridge Littleton (left early)
Councilmember Catherine "Bundles" Murdock (left early)
Councilmember Erik J. Scheps
Councilmember Mark T. Snyder
Councilmember Kathy Jo Shea

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

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on Thursday, September 10, 2015 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.

Public Comment

Marc Chretien, the owner of Mt. Defiance Cidery, advised Council that his business was doing so well that it needed to grow. He further advised that he could expand his existing location at 207 West Washington Street; however, it would involve tearing down the building. Mr. Chretien opined that he just needed land. He advised that he was happy with his current location and would like to continue to operate there. Mr. Chretien reported that he had a sixty day study period contract for the purchase of twelve acres of land located at the end of East Federal Street. He opined that it was ideal for him, even though part of the acreage was located in the flood zone; and, advised that he would build on the higher land. Mr. Chretien reported that he would clear the stone fence and plant apple trees.

Mr. Chretien explained that the issue was that eight acres were located in the County and four in the Town. He reported that Loudoun County required a minimum of ten acres for a winery, which was how he was licensed. Mr. Chretien advised that the County could not give him a farm permit because the entire ten acres must be under their jurisdiction. He noted that the County indicated that they would have no objection if Middleburg annexed the property. Mr. Chretien reported that he was proposing to construct an 1860's style historic barn that would look like it belonged in Middleburg. He further reported that VDOT has said they were fine with the project as long as there was three hundred ninety feet of distance sight. Mr. Chretien advised that he would not need to construct a turn lane and would have an entrance on Route 50. He noted that most of the property was primarily surrounded by a cemetery and advised that he would only have one neighbor, who would be located on the end of Federal Street. Mr. Chretien advised that he would provide a large buffer of trees between that property and the cidery.

Town Administrator Semmes questioned whether the Council wished to schedule this as a work session discussion. Councilmember Snyder requested input from the staff.

Mr. Chretien advised Council that, at some point, he must take a leap of faith. He expressed hope to get enough of an indication from the Council within the next fifty days so that he could buy the land.

Vice Mayor Kirk questioned whether the staff could have something for the Council's review by the next work session. Town Planner Moore inquired as to what they were asking for. Councilmember Snyder asked the staff to investigate the County's determination and offer advice on how to proceed both with and without an annexation. Councilmember Shea requested information on the traffic impacts of this request.

Mayor Davis advised Mr. Chretien that this matter would be scheduled for discussion during the September work session.

Addition of Item to the Agenda

Vice Mayor Kirk moved, seconded by Councilmember Murdock, that Council add item #VI(B) to the agenda (Council Approval – Resolution of Appreciation – Law Enforcement Officers).

Vice Mayor Kirk noted that the Town has always had good police officers. She explained that she wanted the Town to stand up for all police officers in light of what was happening around the country. Ms. Kirk expressed hope that other jurisdictions would do so as well.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Special Recognitions by Mayor and Council

Mayor Davis asked that the Resolution of Appreciation for the Middleburg Volunteer Fire Department be postponed. She noted that it would be placed on a later agenda.

Resolution of Appreciation – Local Law Enforcement

Vice Mayor Kirk moved, seconded by Councilmember Murdock, that Council approve a Resolution of Appreciation expressing the Town's full support for all law enforcement officers, in particular those serving the Middleburg Police Department, the Loudoun County Sheriff's Department and the Virginia State Police and encouraging citizens everywhere to stand up for the safety of those police officers across the country that protect and serve them.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Mayor Davis read the resolution aloud and presented a signed copy to Chief Panebianco. Councilmember Murdock asked that the Chief share it with his officers.

Vice Mayor Kirk opined that the Town Clerk did a great job drafting the resolution. Councilmember Murdock agreed it was beautifully worded.

Public Presentations

Middleburg Film Festival

Giardy Ritz and Madison Lee, of the Middleburg Film Festival, appeared before Council to provide an update on the festival. Ms. Ritz advised that the venues would include The Hill School, the Salamander Resort, the National Sporting Library and Buchanan Hall in Upperville. She noted that the Community Center would serve as their headquarters. Ms. Ritz assured Council that in the future, they would try to avoid scheduling the festival on Halloween as it did not work well for them last year. She reported that despite that, there was an increase in attendance, with the number increasing from two to three thousand attendees last year.

Ms. Ritz advised Council that they hoped to have the slate of films available by late September and noted that they would consist of twenty to twenty-five films. She reported that ticket packages were currently on sale and advised that, once the film slate was available, they would sell individual ticket packages. Ms. Ritz advised that the box office would be open starting October 18th. She announced that Governor Terry McAuliffe would be present, as would Senators Mark Warner and Tim Kane.

Ms. Ritz announced that two films were slated for showing – “*Carol*” and “*I Saw the Light*”. She noted that for the third year, they would honor a composer and announced that this year, they would honor Carter Burwell, who was known for films such as “*Psycho 3*”, “*Fargo*”, the “*Twilight*” series and, “*Carol*”.

Ms. Ritz reminded Council that for the past two years, the Shenandoah Conservatory provided the orchestra; however, they were unable to do so this year. She announced that the Loudoun Symphony would provide it and would help promote the event. Ms. Ritz advised that they would play the scores while the film was shown. She noted that the composer would then do a Q&A session. Ms. Ritz advised that they would have a film critic present this year. She further advised that they would also honor a cinematographer, Dante Spinotti, who did “*I Saw the Light*”, “*LA Confidential*”, “*the Insiders*” and “*Last of the Mohicans*”. She noted that he would also do a Q&A session.

Ms. Ritz asked that the Town help cover the cost of the festival, which totaled \$115,000 to create “theaters”. She advised that they could only screen the top films if they could provide quality and noted that the studios would send representatives to make sure it was up to par. Ms. Ritz reported that they would create theaters and box offices by bringing in screens, digital projection equipment and sound systems. She asked that the Town consider donating \$10,000 toward the costs.

Some members of Council noted that the opening night for the festival would occur on the same night as their work session. They suggested they discuss changing the meeting date at the next meeting.

Shakespeare in the Burg

Genie Ford, Joanne Hazard and Mimi Stein appeared before Council representing the Shakespeare in the Burg Committee. Ms. Ford reported that last year, they doubled their attendance at all of the performances. She noted that they received a lot of good publicity and expressed hope that it would continue. Ms. Ford reported that they were working on next year’s event and have already received eighty entries for the one-act play competition.

Ms. Ford reported that they would have some challenges this coming year. She noted that the event would include two performances from the American Shakespeare Center - *Henry V* and *The Importance of Being Ernest*. Ms. Ford advised Council that they needed a larger stage as *Henry V* involved a lot of fighting. She noted that they were committed to keeping the event at the Community Center and explained that they were trying to figure out how to add eight feet to the front of the stage. Councilmember Hazard reported that he has found three sources for an adjustable stage.

Ms. Ford confirmed there was enough space to extend the stage without affecting the audience. She noted that there were some visibility problems last year for those who sat at the back of the room as part of the stage was on the floor. Ms. Ford advised that the solution was to extend the stage.

Ms. Ford expressed the Committee's appreciation for the support they have received from the Town Council. She invited the members to be guests at one of the performances.

Ms. Hazard reported that the attendees at this year's event were not just local residents but were people who traveled to Middleburg from great distances. Ms. Ford noted that some had never been to Middleburg before. She opined that the Committee was on the right track. Ms. Ford noted that she never expected attendance to double in one year.

Ms. Hazard opined that it was nice that Middleburg was becoming an arts community and suggested it was a plus for the town. Vice Mayor Kirk noted that the arts were making Middleburg a destination.

Approval of Minutes

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the August 13, 2015 Regular Meeting Minutes as amended.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Staff Reports

Vice Mayor Kirk inquired as to which valve was clogged. **Stuart Will, of IES**, advised Council that the Mare Center had valves that had not been exercised for three years. He reported that when they closed the valve from their well, it would not re-open so the Center had to purchase water from the Town until it could be repaired. Vice Mayor Kirk thanked IES for their work in repairing the leaks.

Councilmember Murdock noted that she received a comment from someone regarding low water pressure on the east end of town. Councilmember Snyder reminded Council that an improvement was planned that would address the water pressure issue. Town Administrator Semmes reported that the project would be let out to bid next week.

Vice Mayor Kirk noted that she was experiencing brown water issues. Mr. Will reported that a water line flushing was scheduled for October, which should decrease the frequency and severity of the brown water. Councilmember Murdock requested that the public be notified of the flushing.

Councilmember Snyder asked Mr. Will to contact him when he was ready to install the weather station he donated and offered his assistance with the installation.

Town Administrator Semmes reported that she received a request from the Muscular Dystrophy Association of the Greater Washington Area to do a boot campaign from September 21-25 in the town. She advised that they wanted to confirm that it was okay to do one in Middleburg and noted that the County would not allow it. Ms. Semmes reported that other small towns were allowing it. She advised Council that she spoke with Todd Wenner, the local Battalion Chief, who reported that some of their members were participating. Ms. Semmes noted that MDA confirmed that the funds raised in Loudoun County would remain with County families.

Vice Mayor Kirk noted that the boot collection was held in other jurisdictions last week. Town Administrator Semmes opined that the delay may have been due to the County's review process.

Vice Mayor Kirk urged caution and noted that a firefighter in Michigan recently died after being struck by a car while he was conducting a boot campaign.

Councilmember Shea inquired as to the location for the collection. Town Administrator Semmes reported that it would be conducted at the traffic light and would only be done while traffic was stopped. Councilmember Shea asked that the participants be alerted as to the turn movements in this area as many cars came close to the curb on Madison Street.

Vice Mayor Kirk requested an update on the proposal for new police space. Town Administrator Semmes reported that she had received additional information; however, she had not had the opportunity to discuss it with the Chief of Police. She suggested it be brought to Council during the work session.

Vice Mayor Kirk advised Council that she met with the staff earlier in the day regarding amendments to the Employee Handbook. She noted that she proposed a lot of changes. Ms. Kirk questioned whether the Council wished to break the review into pieces, with three or four chapters being reviewed in each work session, or whether they wished to establish a sub-committee to work on it and then present their findings to the Council. After some discussion, the Council agreed to allow a sub-committee to review the changes, as long as the full body also had the chance to review it prior to adoption. Vice Mayor Kirk asked that Mayor Davis and Councilmember Shea assist in the review.

Economic Development Coordinator Pearson reported that Sugar Magnolias was doing business as Nature Composed. She further reported that Go Green was now meeting at 6:00 p.m.

Vice Mayor Kirk inquired as to the status of the doctor who was practicing out of her home. **Town Planner Moore** reported that Dr. Roberts had been issued a permit for a home occupation.

Vice Mayor Kirk questioned whether this would generate a lot of traffic. Town Planner Moore opined that it should not as the applicant represented that she would only be working on Mondays. He noted, however, that there was nothing he could do to hold her to that and explained that the Town Code language regarding home occupations was "soft". Mr. Moore noted that the Town Code only stated that the home occupation could not affect the residential character of the neighborhood and did not specify any prohibitions.

Councilmember Shea questioned whether the Town should consider including traffic in that code section. Town Planner Moore opined it should. He noted that he was formulating some thoughts of possible things that could be clarified in the ordinance. Mr. Moore agreed it needed more structure and definitive performance standards. Town Administrator Semmes noted that this would make it easier to enforce.

Vice Mayor Kirk expressed concern about the revenue generated from business licenses. **Town Treasurer Wheeler** reported that business licenses were not due until March 1st. Vice Mayor Kirk noted that it was down and opined that the Town had gained businesses, not lost them.

Chief of Police Panebianco thanked the Council for their tribute, which he would share with his officers and the Police Chief's Association. He noted that as to the firefighter that was killed during a boot campaign, it was the result of a conflict and reported that the individual involved intentionally ran over the firefighter. Chief Panebianco reported that he and the Town Administrator were continuing to work on a parking plan. He advised Council that he and Lieutenant Prince attended training at the Police Chief's Association Conference last week.

Chief Panebianco reported that an officer's house was broken into and advised that the officer's badge, uniform shirt and some items from a gun belt were stolen; however, the gun was not. He further reported that the Warrenton Police Department was in the area due to calls they had received on a gentleman and heard an officer giving commands to someone. Chief Panebianco noted that the suspect was wearing the officer's uniform shirt and reported that he was arrested and released. He advised that the suspect was arrested again the next day for stealing a purse. Chief Panebianco opined that the officer did well and noted that he was sending a letter to Warrenton's Police Chief commending his officers. He noted that the suspect had bolted the officer's front door with a chair and advised that her only means of ingress would have been through her back door. Chief Panebianco advised that the suspect's only means of egress was through this same route and opined that the situation could have been bad.

Vice Mayor Kirk opined that the officer handled the situation well. She asked that the Chief share a copy of the Resolution of Appreciation with Warrenton.

Chief Panebianco reported that the Department was preparing for the Middleburg Film Festival and opined that it should be non-eventful in terms of an impact on the Town. He expressed hope to resume work this month on the candy cane barriers for the Christmas Parade route.

Chief Panebianco reported that he misspoke during the last Council meeting when he reported that he was working with the Commonwealth's Attorney on a project. He advised that he was actually working with the Commonwealth Attorney's Association.

Chief Panebianco reported that Lieutenant Prince was doing a great job on a large number of cases on which he was working, with some charges having been filed. He noted that one was a financial case, which was not easy to work. Chief Panebianco thanked the Loudoun County Sheriff's Department for assisting and providing advice, which would allow Lieutenant Prince to wrap up a number of potential cases, including the three for which charges were filed.

Chief Panebianco advised Council that every year, he updated the Police Department's policies to make sure they were good standards under which the Department should be operating. He reported that he recently made four notable changes in the document. Chief Panebianco noted that in trying to keep officers' images positive, he removed some buzz words that could create conflict and reported that he changed the title for the "Use of Force Policy" to "Response to Non-Compliance and Resistance". He opined that the new name put the title in perspective and went along with the Department's guardian style of policing. Chief Panebianco reported that there were no major changes to the policy, except for a few simple step changes.

Chief Panebianco reported that he developed a policy on "Internships and Ride Alongs". He explained that the policy was intended to keep the Department from being inundated with ride along requests from citizens by limiting them to twelve per year.

Chief Panebianco reported that he developed a policy on the “Use of Body Worn Cameras” and noted that some of the officers have been testing them for the past couple of weeks. He opined that the system was working well. Chief Panebianco suggested that, at some point, the use of body worn cameras would be mandated. He reiterated that two officers have been wearing them and expressed hope that all of them would be by the end of the month, if they were trained. Chief Panebianco noted that the cameras were for the protection of the citizens and officers. He advised that they were obvious as they were worn on the chest or shirt pocket and would beep every thirty seconds so the officer and citizen would know they were being recorded. Chief Panebianco advised that the officer would tell the citizen he/she was being recorded in some circumstances; however, they would not be able to do so for all situations.

Chief Panebianco reported that he also drafted a policy on “Contract Officers” and noted that the Department has used them during the Christmas Parade. He explained that the biggest thing with contract officers was that he wanted the officers to know that there was no chain of argument. Chief Panebianco explained that if he believed they were not doing their job right, he would have the ability to send them home. He noted that he also included language on auxiliary police officers so the Town would have the ability to use them with the Council’s approval. Chief Panebianco noted that auxiliary officers worked for free. He reported that under the State Code, there were different levels of auxiliary police officers and advised that he proposed to only use individuals at the certified officer level so they could do the same job he did. Chief Panebianco opined that it was not appropriate to have a different level of person with a badge but no gun, nor did he want the perception that someone was a police officer if he was not. He noted that he was not proposing that the Town use them; however, he wanted to have a policy in case the Council wanted to use them. Chief Panebianco acknowledged that their use was not free as there would be insurance costs.

Councilmember Snyder inquired as to what a “Terry Stop” was. Chief Panebianco explained that it allowed an officer to stop and frisk an individual.

Councilmember Shea noted that she had some comments. She questioned whether the Chief wanted her to go over them with him during this meeting. Councilmember Snyder suggested she share them with Chief Panebianco.

Councilmember Murdock questioned whether anyone could participate in a ride along, including non-residents. Chief Panebianco opined that because the Department was a public entity, he could not deny a request because the individual did not live in town. He advised, however, that priority would be given to Town residents. Chief Panebianco noted that if the members of Council wished to do a ride along, they would not count toward the limit.

Councilmember Shea noted that the policy stated that an applicant was entitled to ride every six months and questioned whether the same person could return in six months to do another ride along. Chief Panebianco confirmed they could make the request; however, this did not mean it would be approved. He explained that he was trying to support someone who had a genuine interest in policing, while avoiding having a person who was upset with an officer do a ride along with that officer.

Councilmember Shea suggested that more thought be given to the policy. She questioned what would happen if someone who wanted to be a vigilante wanted to participate. Ms. Shea suggested the need for clarification of the policy. Chief Panebianco confirmed he would do so.

Vice Mayor Kirk noted that she was working with the staff on updates to the Employee Handbook and advised that she was trying to protect against what could happen in the future. She advised that she added something regarding body cameras and suggested the Chief look at it.

Vice Mayor Kirk reminded Council that they held a discussion about street access and the fact that only one car could pass on some streets due to rocks that have been placed in the right-of-way. Chief Panebianco noted that he submitted a list to the staff.

Vice Mayor Kirk questioned whether the Police Department handled complaints regarding tall grass and dilapidated buildings. Town Administrator Semmes advised that she handled those. Chief Panebianco reported that the officers delivered the letters from the Town Administrator.

Vice Mayor Kirk opined that the Chief did a good job with the policies. Chief Panebianco thanked the Council and staff for their support.

Mayor Davis thanked Vice Mayor Kirk for initiating the Resolution of Appreciation and opined that the negativity being exhibited as a nation was sad. Chief Panebianco reiterated that he would send the resolution to the Police Chief's Association. Vice Mayor Kirk expressed hope that other jurisdictions would adopt similar resolutions.

Councilmember Murdock questioned whether the Town Attorney reviewed the police policies. Town Attorney Plowman confirmed this was the first time she saw them.

Action Items (non-public hearing related)

Council Approval – By-Laws – Economic Development Advisory Committee

Councilmember Murdock questioned whether Anne Hallmark expressed an interest in changing the Committee's name. Economic Development Coordinator Pearson advised that she did not want to change the name but rather wanted to make sure the community was included. She noted that by definition, economic development included the community.

Councilmember Shea suggested paragraph A under "Powers and Duties" be amended to read "Such rules shall become effective upon approval of the Town Council". The remainder of Council agreed.

Councilmember Shea suggested the Mission Statement be changed to read that "EDAC's mission is to advise and assist the Middleburg Town Council in the development of economic strategies that serve to promote and enhance the economic, business and cultural welfare of the Middleburg community". She noted that their job was to advise the Council, not to do it. The remainder of Council agreed.

Town Attorney Plowman noted the need to insert the word "with" in the third line from the bottom of Section 3-3. She questioned whether the Middleburg Business & Professional Association would designate a representative, who would then be appointed by the Council to the Committee. After some discussion, the Council agreed to add the phrase "with the approval of" so it was clear that the MBPA would make a recommendation, with the Council making the appointment.

Vice Mayor Kirk moved, seconded by Councilmember Shea, that Council approve the By-Laws of the Middleburg Economic Development Advisory Committee as presented and amended.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Council Approval – IES Contract Amendment

Mark Inboden, of IES, advised Council that his father asked him to express his regret that he was unable to attend the meeting. He noted the need to make amendments to the contract in order to define the roles. Mr. Inboden advised Council that initially they believed the full-time licensed operator would be supplemented with a part-time licensed operator; however, in looking at the Town's needs, they believed it would be better if they had a full-time maintenance person as opposed to a second licensed operator. He reported that the maintenance person would perform mundane daily operations in order to assist the operator, as well as doing valve and meter replacements and utility line locates. Mr. Inboden advised that if a motor went out, they needed a person who knew about electronics. He advised that the contract has been reworded to reflect that change.

Councilmember Snyder noted that this has been addressed in the Utility Committee meetings and reported that the Committee believed the additional \$5,000/month worth of additional services were necessary.

Councilmember Shea questioned whether the increase in staffing was due to existing needs or whether this was based on future needs due to the building of homes. Councilmember Snyder confirmed it was to address the current workload.

Town Administrator Semmes reported that this would allow the Town to have someone here as opposed to bringing someone in separately when there was a maintenance job, which may reduce the extra maintenance costs the Town currently paid. She advised that the extra cost may not be \$5,000/month once this was taken into consideration.

Councilmember Hazard questioned when the contract would be up for rebid. Town Administrator Semmes reported that the contract contained an option to renew for four (4) additional one-year periods.

Town Attorney Plowman advised that while she had reviewed the contract, she just found an error in Section R-4. She advised that she would correct this language.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the First Amendment to the Town of Middleburg Utility Management Services Contract with Inboden Environmental Services as amended. Councilmember Snyder further moved, seconded by Vice Mayor Kirk, that Council authorize the Town Administrator to execute the contract on the Town's behalf.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Council Approval – NEA Grant Application

Town Administrator Semmes advised Council that she had hoped to have a number from the structural engineer; however, she was unable to get that information. She noted that the estimate was \$100,000, which was the same amount the Town had in the budget for this project. Ms. Semmes reminded Council that the grant match could be in the form of cash or in-kind services. She opined that the match would cost the Town less than \$100,000. Ms. Semmes she suggested the Council grant authorization for the staff to apply up to that amount.

Councilmember Snyder moved, seconded by Councilmember Littleton, that Council authorize the staff to submit an NEA Our Town grant application in the amount of up to \$100,000. Councilmember Snyder further moved, seconded by Councilmember Littleton, that Council authorize the Mayor to sign a support letter to be submitted with the application.

Town Administrator Semmes reported that a feasibility study would be performed in order to ensure that whatever was created would not be a money drain to the Town.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Councilmember Shea questioned whether parking would be a part of the study. Town Administrator Semmes confirmed it would.

Discussion Items

Request to establish regulations to allow for ghost tours in public rights-of-way – Heather Kyle

Heather Kyle, the applicant, advised Council that she was an anthropologist and ethnographer and came to Middleburg to collect stories. She further advised that in talking with people and working in some of the most haunted locations in Middleburg, she discovered that she was related to the Shrieking Shrew of Foxcroft. She opined that there was not a lot for families to do in the evening and noted that a lot of cities in Virginia offered ghost tours. Ms. Kyle expressed a desire to create a ghost tour in Middleburg that would be modeled after the ones offered in Williamsburg. She advised that the tour guides would be in costume and their presentations would be based in historical fact. Ms. Kyle noted that the information she provided talked about how she planned to protect the Town against liability. She advised Council that she would like to kick off her tours on October 1st, if possible, in order to have a couple of weekends under her belt before the Middleburg Film Festival. Ms. Kyle reported that her website was poised and ready to go. She noted the need to secure an itinerant business license. Ms. Kyle further noted the need to know the regulations so she could get started.

Councilmember Shea asked Ms. Kyle whether she understood that it took a governing body longer than her October 1st deadline to adopt an ordinance. Ms. Kyle advised that if the October 1 deadline could not be met, she would look at operating the tour starting in April of next year.

Councilmember Snyder questioned whether this would require a new ordinance. Town Planner Moore advised that unless Ms. Kyle had a physical presence for her business in town, she would not need an occupancy permit to operate. He advised that from a zoning standpoint, he would treat her as a contractor that provided services. Mr. Moore confirmed there were no zoning implications. He opined that the issue was a Town Code issue.

Town Clerk North explained that the State Code allowed jurisdictions to regulate tour guides and read the State Code provisions. She noted that the agenda packet also contained information on Williamsburg's tour operator program.

Councilmember Shea expressed concern about the proposal to offer tours on Halloween and other times. Ms. Kyle noted that she did not necessarily need to do so on Halloween night. She further noted that this year, Halloween fell on a weekend.

Councilmember Shea noted that Ms. Kyle's proposal mentioned the Middleburg Film Festival and other activities. She further noted that the Council was currently looking at establishing a special events calendar. Ms. Shea explained that they were doing so because there were times when the Town must have additional police presence available. She suggested that if there were other activities in town and the public sidewalks were being used for tours, there could potentially be a need for increased police patrols. Ms. Shea requested the Police Chief's thoughts on the request.

Chief Panebianco noted that he had not yet seen the request. He advised, however, that he had some questions. Chief Panebianco noted that the tours would be conducted on a public sidewalk and asked Ms. Kyle what she planned to do if someone participated in a tour without paying the required fee. He questioned what would prevent someone for walking up and following the tour. Ms. Kyle advised that anyone on the tour would be given a glow stick in order to make it apparent that they were on the tour and would be asked to sign a liability release form. She noted that there would also be two people assigned to each tour, one in the front and one in the back. Chief Panebianco reiterated that she would be on a public sidewalk and could not stop someone from following the tour.

Councilmember Shea opined that this was something the Council needed to discuss. She advised that she had concerns and noted that the Council had not had the opportunity to discuss this with the Police Chief or review the liability issues with the Town Attorney.

Mayor Davis inquired as to the number of participants that were expected per tour. Ms. Kyle reported that they would limit them to twenty individuals. Vice Mayor Kirk expressed concern that this was a lot of people. Ms. Kyle explained that she said twenty because some people may have children. She opined that twenty was a manageable size.

Councilmembers Murdock and Shea noted the need for Council to discuss this with the staff and have time to digest the information.

Ms. Kyle encouraged the Council to take their time. She noted that her time frames were not chiseled in stone. Ms. Kyle advised that she just needed to know the regulations and items such as where she could walk. She noted the need to talk to the Baptist Church about going into the cemetery and advised that there were things that needed to be put into place. Ms. Kyle explained that she was waiting to do so until the Council had a chance to set the regulations.

Special Events Procedures

Councilmember Shea reminded Council that when they brought the proposal before them last, they said the sub-committee was headed in the right direction. She reported that she asked the Town Planner to make the language work. Ms. Shea reminded Council that the Town Code contained a special events permit ordinance. She advised that the Council had the proposed changes to the ordinance and noted that there were a few more that were being proposed to Section 6-3 by the sub-committee.

Town Planner Moore reminded Council that what they previously reviewed was a policy document and advised that he tried to help translate that into a modification to the existing Town Code Chapter. He reminded Council that the current Special Events Chapter talked about the procedures to be used for a limited set of circumstances. Mr. Moore reported that subsequent to talking with Councilmembers Shea and Hazard, he also spoke with other staff members; therefore, some changes were being proposed that have not been reviewed with the sub-committee.

Town Planner Moore advised that Section 6-4(C) was proposed to be amended to include a dollar amount for the liability insurance. He reported that the Town Administrator, as the approving authority for the permit, has expressed an interest in developing criteria so the review would not be purely subjective. Mr. Moore suggested he work on some language and that the sub-committee get together in the near future.

Town Planner Moore advised Council that the goal was to keep the application simple. He advised that he tried to keep it short, while also gathering the information that was needed. Mr. Moore suggested that, if adopted, it be available electronically with hyperlinks to some of the related agencies. He suggested the need to include related agencies and cited as an example that the applicant may not realize when taking about food vendors that there were health regulations that needed to be addressed. Mr. Moore suggested the need to notify them of those things. He noted the need for the Town Attorney to review the draft ordinance.

Councilmember Murdock expressed concern about the definition that was proposed for a “special event” and noted it would apply to any gathering that required on-street parking of more than twenty vehicles. Ms. Murdock questioned whether this would apply to a funeral related event. Councilmember Shea confirmed that funerals themselves were excluded. She noted that if Ms. Murdock had a large party at her house that involved parking on the street, she must let the Police Department know and secure a permit.

Economic Development Coordinator Pearson inquired as to what would happen if the family had a gathering at their home after a funeral. She noted that there would not be enough time to get a permit and advised that this was not covered by the exception. Town Administrator Semmes suggested the exemption of funeral-related items.

Mayor Davis expressed concern about requiring a permit if someone were to hold something at their home after a funeral. She noted that they were not having a party.

Councilmember Shea opined that the Police Department needed to know when there were twenty cars parked on the street.

Councilmember Littleton noted that the Police Department already knew when there was a funeral. He suggested they simply ask the family about their plans afterward. Councilmember Snyder agreed and suggested that funeral-related activities be exempted.

Town Planner Moore suggested there be an exception in which the notification period could be shortened. Councilmember Murdock advised that she did not want a family member to have to fill out a form when their mother died.

Councilmember Hazard reminded Council that they already had something that had a lot of exceptions and opined that it was complicated. He suggested the need for simplicity.

Councilmember Snyder advised that he did not want a family member to have to fill out an application because a member of their family died. Councilmember Hazard agreed. Councilmember Murdock noted that she would not do so. She suggested the language related to the twenty cars be tweaked and that an individual not have to provide forty-five days’ notice.

Town Planner Moore reminded Council that the impact remained the same regardless of the purpose of the gathering. He suggested the Council needed to decide when the Town needed to know the impact of what was going to occur. Mr. Moore opined that no one from an administrative standpoint would deny a request if they knew it was happening in less than fourteen days.

Councilmember Murdock advised that the last thing on someone's mind when they were planning a funeral was the need to go to the Town Office. Councilmember Snyder agreed a celebration could be planned, but a wake was seldom planned.

Councilmember Shea suggested the sub-committee work on this further. She opined that the Town needed to know that an entire street was going to be lined with cars on both sides in the event there was something else going on.

Councilmember Littleton opined that if someone died in town, the Chief already knew about it. He suggested he ask the family about their plans after the funeral. Councilmember Snyder agreed.

Councilmember Shea inquired as to how the Police Department was to know about a funeral. Chief Panebianco confirmed that the funeral home let the Department know if it was one located in the town. He advised that while the sub-committee discussed a lot of issues, they did not discuss this one. Chief Panebianco recommended the sub-committee work on the ordinance further and opined that there could be an exemption. He confirmed the Department often knew when someone died so they could patrol the family's house as these individuals could become victims of home invasions.

Mayor Davis expressed an understanding of the need for a permit for a special event; however, she advised that she did not want to get too involved in residential activities. She agreed that if someone was having a party with one hundred people, they would plan ahead. Ms. Davis opined, however, that when the Town started regulating everything, including when someone had a family reunion, it was over stepping its bounds. Councilmembers Snyder and Scheps agreed.

Chief Panebianco noted that it was a best practice to cover everything; therefore, the sub-committee brought everything to the Council. (Councilmember Murdock left the meeting at 7:40 p.m.) He noted that the Council would determine the finished results. Chief Panebianco reminded Council that an event may result in a Town expense, either directly or indirectly, when something happened. He advised that the thing to avoid was multiple events, such as a ghost tour on Halloween, occurring at the same time. Chief Panebianco noted the need for a process to identify when this could occur.

Councilmember Shea reminded Council that there would be no fees associated with residential events.

Mayor Davis advised that her concern was not related to money. She expressed concern about sending a letter to people saying "from here on, you must apply for a permit if you have more than twenty cars". Ms. Davis noted that this could easily occur on Christmas Day. She reiterated her concern that this was starting to over step the Town's bounds.

Councilmember Hazard suggested the number of vehicles be increased to fifty. Councilmember Scheps advised that his concern was the process of coming to the Town. Councilmember Shea noted that the individual would not have to come into the Town Office to get a permit.

Mayor Davis suggested the determining factor be the number of people present and suggested it be one hundred. She further suggested that cars be removed from the equation. Ms. Davis opined that the Town could explain the point that it wanted to advise the Police Department when there would be a large gathering to make sure that traffic control was provided if necessary.

Chief Panebianco opined that there would always be some individuals who would not let the Town know about an event. He suggested the Town set a standard, at whatever level the Council chose, that would allow the Police Department to know about an event in advance. Chief Panebianco acknowledged that it could apply to someone holding a Christmas party. He suggested the Council set the number. Chief Panebianco explained that the sub-committee felt a responsibility to raise these issues.

Councilmember Snyder reminded Council that the Town served the citizens. He suggested the citizens should not be expected to serve the Town inordinately. Mr. Snyder recommended that any regulations that required an individual to notify the Town should be for an extraordinary event and should not be for something the Town could normally handle.

Mayor Davis questioned whether the Town had experienced any major problems with this. Councilmember Littleton opined that it had not and noted that the Police Department usually knew of an event in some form.

Councilmember Shea reminded Council that the sub-committee included the Police Chief. She advised that he had input on the sub-committee's recommendation and felt there needed to be some standard. Ms. Shea reminded Council that this was being written not for today, but for the future. She further reminded them that they were looking at a major increase in the Town's population.

Mayor Davis questioned whether the proposal included weddings in a local church. Chief Panebianco noted that the Department did not always know about a wedding, although the churches were getting better about letting the Town know about parking. He reminded Council that this started as a way for the Town to know of events. Chief Panebianco noted that the process could have been left to specific events; however, he advised that the sub-committee felt a responsibility to say "these were the things that could cause impacts". He reiterated that it was the Council's decision as to what stayed. Chief Panebianco noted that the entire sub-committee felt that parties in a residential neighborhood could be an issue.

Councilmember Hazard explained that part of the reason this came up was that there could be a party at the same time the Police Department was tied up with a parade. He further explained that the notification process was being proposed so the police would know about an event. Mr. Hazard expressed an understanding of what the Council was saying; however, he suggested it should not be complicated. He cited the example of Halloween and the Middleburg Film Festival that occurred last year. Mr. Hazard suggested that if a party with two hundred guests occurred at the same time as the Film Festival, there may be a need for extra police. He suggested that if the Council said they did not want to do this, it would be fine; however, he explained that the proposal came about so the police would know of an event so they could plan.

Councilmember Shea suggested that if this was not in the Town Code, the police would be limited in what they could do. She opined that there needed to be something that allowed them to find out about activities. Ms. Shea suggested it may need to be refined; however, she opined that this was needed.

Mayor Davis suggested that people be requested to fill out a form only in the event that one hundred people would be present so the police could be aware of it.

Councilmember Snyder suggested that usual, normal, everyday items not get caught in the process.

Mayor Davis suggested it be clear why the Town was doing this. She further suggested it not be a regulation. Ms. Davis asked the sub-committee to continue to work on this item and then return to the Council.

Information Items

Vice Mayor Kirk reported that she received a call from a citizen who was concerned that the house located at 102 Sycamore Street was being rented out on a nightly basis through a business called Airbnb, with large numbers of people coming in and out of the house.

Town Planner Moore advised Council that he and the Town Attorney have discussed this issue and had intended to return sooner on the related issue of the Salamander development. He reminded them that it was the staff's understanding that Salamander may desire to have transient occupancy of the houses and suggested the need to have a discussion with the Council about this. Mr. Moore reported that there were different ways to address that type of occupancy and advised that the staff needed direction from the Council on what it wanted to allow.

Vice Mayor Kirk opined that a house in a residential area should not be used as a bed and breakfast. Councilmember Shea opined that what was occurring would not qualify as a bed and breakfast.

Town Planner Moore explained that Airbnb was a website. He further explained that an individual would rent out a house or a room in a house on a nightly basis through it.

Councilmember Snyder advised Council that he would like to know the Town's legal options and the legal requirements for that type of business. He opined that if they were operating a business that was one thing; however, it was another if someone was simply swapping houses while out of town.

Mayor Davis questioned whether the owner must live on the property. Councilmember Littleton suggested the staff research this issue.

Town Planner Moore advised that this was being addressed differently by different communities. He noted that one such way was to permit the use for an owner-occupied residence. Mr. Moore cited the City of Charlottesville as an example of a community that allowed it if the property was owner-occupied and they received a special permit to rent it on occasion. He opined that the staff would need to have a discussion before it could offer the full range of options. Mr. Moore suggested they return to the Council in a work session to find out what the Council wanted to allow, if anything.

Councilmember Snyder noted that he would be fine if it was owner-occupied and the rental was incidental. He advised that he did not want someone to purchase a home and rent it out every night.

Councilmember Scheps advised that he was okay with the swapping of houses for vacation.

Councilmember Snyder noted that he was not in favor of making houses available for rental on a nightly basis. Councilmember Hazard noted that there were tax implications for doing so, such as the need to collect occupancy taxes.

Vice Mayor Kirk reminded Council that they specifically limited the number of rooms that Salamander could rent; however, they have sometimes rented one hundred seventy. She advised that she did not want transient housing to be a way for Salamander to expand the number of rooms they had available. Ms. Kirk opined that this would basically create a larger hotel. Mayor Davis asked the staff to research this further.

Town Attorney Plowman noted that there were many issues involved in this. She suggested the need to start chipping away at each one.

Councilmember Snyder requested limits that fit with a small town. Town Planner Moore acknowledged what the Council was saying; however, he noted that this was something new so there were no models for what fit in a small town. He suggested the need for some back and forth conversation so the staff could understand what the Council was comfortable with. Mr. Moore suggested the staff return at a work session with some different scenarios in order to gain the Council's input.

Mayor Davis asked that the staff research Airbnb and how it worked. She questioned whether people were buying houses for this purpose or whether they were doing it in their homes. Town Planner Moore confirmed it was both and advised that he was using this service next month in New York. He confirmed there was one rental in Middleburg on which he has been checking on a weekly basis.

Vice Mayor Kirk reported that the turnover at the house on Sycamore Street was great. She further reported that cars could be seen all up the street and even parked in a neighbor's yard. Ms. Kirk advised that she has seen groups of people going in and out of the house.

Mayor Davis asked the staff to provide information on what the Town could and could not regulate. Town Planner Moore suggested that once the Council identified what, if anything, it was comfortable with, the staff could look at an approval process and the associated regulations.

Councilmember Littleton asked that the staff research how other communities handled this. Mayor Davis questioned whether the Town could implement parking regulations.

Vice Mayor Kirk noted that the police have been called for noise violations. She advised that the neighbor was reluctant, however, to call the police when someone parked in their yard as they were concerned about being targeted for retaliation.

Councilmember Shea advised Council that she has received a citizen suggestion that a crosswalk be installed mid-block on Madison Street so cars could see the pedestrians. She further advised that she received another suggestion that the punch buttons be removed from the crosswalk at Madison and Washington Streets and be replaced with a system that would automatically change when the traffic light changed.

Town Administrator Semmes noted that this would slow vehicle traffic if there was no pedestrian traffic. She advised Council that she would raise this with VDOT and noted that they were responsible for programming the traffic lights.

Closed Session – Personnel

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) 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. Vice Mayor Kirk further moved, seconded by Councilmember Shea, that these matters be limited to a discussion of (1) the performance of a Town employee and (2) the possible resignation of the Town Clerk. Vice Mayor Kirk further moved, seconded by Councilmember Shea, that in addition to the Council, the following individuals be present during the closed session: Martha Mason Semmes and Angela Plowman. 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, Hazard, Littleton, Scheps, Shea and Snyder

No – N/A

Abstain: N/A

Absent: Councilmember Murdock

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

Councilmember Littleton left the closed session at 8:25 p.m. prior to its conclusion.

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

There being no further business, Mayor Davis declared the meeting adjourned at 8:41 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk