



MIDDLEBURG TOWN COUNCIL Regular Monthly Meeting Minutes



Thursday, October 12, 2017

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

STAFF: Martha Mason Semmes, Town Administrator
Martin R. Crim, Town Attorney
Rhonda S. North, MMC, Town Clerk
William M. Moore, Town Planner
Ashley Bott, Town Treasurer
A.J. Panebianco, Chief of Police

ABSENT: Councilmember Kevin Hazard

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on Thursday, October 12, 2017 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

Mark Alvarez, of Stonewall Court, advised Council that they had a homeowners association. He noted that the telecommunications equipment on the Stonewall Water Tower kept growing and included more generators and equipment. Mr. Alvarez advised that the Town was now painting the tower. He noted that whenever a telecommunications company worked at the tower, they used cranes and heavy duty equipment. Mr. Alvarez reiterated that the painters were now there and noted that the residents received a notice that they would be there until November 9th. He advised that they had large equipment parked in front, including two heavy-duty trailers, and were sand blasting. Mr. Alvarez reported that they were tearing up their pavement. He opined that there was an easement that the Town had to access the site, which was reasonable; however, he noted that the HOA bore the burden of repaving. Mr. Alvarez reiterated that there was heavy equipment parked in the fire lane, including a truck and two heavy-duty trailers. He opined that this would not be a big deal if they were only going to be there for a few days; however, he suggested that if they were there another month, it would be an inconvenience. Mr. Alvarez reiterated that the heavy equipment was destroying their parking lot and questioned whether there was a way that the HOA could get compensation. He noted that the cost to repave the parking lot was \$40,000-50,000. Mr. Alvarez questioned whether an emergency vehicle could respond in the event of a life and death situation and opined that they could not get through. He reiterated his request for assistance and noted that they were a small HOA.

Mayor Davis advised Mr. Alvarez that the Council would discuss his concerns and have the Town Administrator get in touch with him.

Town Administrator Semmes advised that she tried to contact Mr. Alvarez; however, his voice mail was full. She noted that Stuart Will and the Town's Maintenance Supervisor looked at the equipment and reported that some items had been moved. Ms. Semmes expressed appreciation for Mr. Alvarez' concerns and noted that the Town would do what it could to address them.

Public Hearing

Cell Tower Lease Agreement – AT&T

Town Administrator Semmes reminded Council that AT&T's equipment had been on the water tower since 1996; however, their lease expired and they were now on a month-to-month tenancy. She advised that the staff had been negotiating a new lease with them for a couple of years. Ms. Semmes explained that the length of time was not due to an issue of terms but rather was due to changing people. She advised that they were now at a point where they were ready to agree on the terms and needed to hold a public hearing. Ms. Semmes asked that the staff be given the authority to conclude the agreement as AT&T had been a good tenant and they were happy with their location. She reported that no new facilities were being proposed and noted that AT&T had made updates over the years.

No one spoke and the public hearing was closed.

Lease of Town Property – Health Center Units

Town Administrator Semmes reminded Council of the State Code requirement for localities to have a public hearing before encumbering public property with a lease. She further reminded them that the Town was actively seeking tenants for the Health Center property and opined that it may have one for one of the units. Ms. Semmes explained that once the public hearing was held, they would be able to offer those units and get leases signed.

Vice Mayor Kirk questioned whether the Town had one lease agreement. Town Administrator Semmes confirmed there was one for one of the commercial units and noted that a couple was coming to look at the apartment unit. She reminded Council that the building had two commercial units and the apartment available, with the commercial units being located in the basement.

No one spoke and the public hearing was closed.

Action Items related to Public Hearings

Cell Tower Lease Agreement – AT&T

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council authorize the Town Administrator to execute a new lease agreement with AT&T for their facilities located on the Stonewall Court Water Tower, subject to final approval by the Town Attorney.

Councilmember Littleton noted that the lease stated "antenna equipment" and questioned whether it was defined. Town Attorney Crim confirmed it was listed in the exhibit. Town Administrator Semmes advised that the exhibit contained a list of the current facilities on the tower, as well as the equipment shed. She noted that the equipment was listed by type.

Councilmember Littleton noted that the lease said "AT&T was allowed to install antennas"; however, it did not limit them to more than they currently had. He questioned whether they could increase the number of box units on the roof. Town Attorney Crim confirmed they could not as the lease stated that it was "as described in Exhibit B". Mr. Crim noted that they could replace it with like equipment; however, they must return to the Council to add any.

Councilmember Snyder noted that the Town had always asked whether the tenant would be willing to pay increased rent if it was going to the next generation of equipment as the tower space would be more valuable.

Councilmember Littleton expressed concern about the numbers, not the equipment, and advised that he would like to see Exhibit B. He noted that a lot of times, a company would list potential equipment even if it was not already there.

Town Planner Moore advised Council that the exhibit was from the approved special use permit. He reminded them that the lease of tower space involved two separate tracks – one acting as the owner of the property and one as the legislative authority for the special use permit. Mr. Moore explained that even if a private property owner had a lease that allowed a company to add all of the equipment it wanted, there was still the legislative side, as the governing body, that required the company to get legislative approval. He reiterated that the exhibit was from the most recently approved special use permit, which defined the number, type and size of the equipment.

Councilmember Littleton advised that he was good with the lease under those conditions.

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

Lease of Town Property – Health Center Units

Vice Mayor Kirk moved, seconded by Councilmember Snyder, that Council authorize the Town Administrator to execute one-year leases with annual renewal options for the vacant Health Center units with the concurrence of the Town Attorney.

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

Special Recognitions by Mayor and Council

Mayor Davis thanked Town Clerk North for organizing the Volunteer Appreciation Reception and noted that it was well done. She also thanked the members of Council for attending the Loudoun Laurels Gala and noted that it meant a lot to her that everyone came.

Councilmember Snyder noted that it was an honor to be there. Vice Mayor Kirk noted that the members were very proud of Mayor Davis.

Public Presentation

Oath of Office – Police Lieutenant, Corporal and Police Officer

Councilmember Daly recited a phrase in Latin, which meant “who will guard the guards”. He noted that the officers were the guards and the people guarded the guards, which meant the people would be watching. Mr. Daly advised that they were being bestowed with a higher standard of conduct than the people held themselves. He opined that they would not be asked to take the oath if they were not capable of carrying it out, both in letter and spirit. Mr. Daly reminded the officers that they have been given a lot of responsibility and discretionary authority and were a part of the community.

Chief Panebianco introduced newly promoted Lieutenant Hollins and Corporal Fadely, as well as Officer Davis. He noted that Lieutenant Hollins had been with the Town for five years and brought twenty-three years of law enforcement experience to the position. Chief Panebianco reminded Council that he was currently their training officer, firearms arms instructor and would be taking over the investigations for the Town, as well as handling his supervisory role. He advised that Corporal Fadely was the first female officer to be promoted in the Town. Chief Panebianco noted that she had been here for six years and brought twelve years’ worth of experience. He advised that she was managing a lot of things, including the speed limit sign and the parking system equipment, in addition to serving as a supervisor as needed. Chief Panebianco introduced Mark Davis, the Town’s newest part-time police officer. He noted that Officer Davis brought thirty-five years’ experience and was a perfect fit for Middleburg as he was a lifelong resident. Chief Panebianco administered the Oath of Honor to the officers.

Chief Panebianco reminded Council that the officers were sworn in by the Clerk of the Circuit Court, which gave them the authority to make arrests and wear a badge. He explained that the Oath of Honor was a standard to hold them accountable to the people. Chief Panebianco noted that they were asked to re-affirm the Oath if they were promoted. He opined that it was important to the community that they are held to a standard based on the community’s needs.

Approval of Minutes

Councilmember Snyder moved, seconded by Councilmember Daly, that Council approve the September 14, 2017 Regular Meeting and September 28, 2017 Work Session meeting minutes as amended.

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

No – N/A

Abstain: N/A

Absent: Councilmember Hazard

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

Staff Reports

Vice Mayor Kirk questioned whether it was an issue to have a fire lane blocked. Chief Panebianco advised Council that there was no agreement with the HOA authorizing the Police Department to enforce parking on their private property; therefore, they could not enforce it. He noted that essentially this was their driveway. Chief Panebianco advised that all they needed to do was to send him a letter; however, Mr. Alvarez said “he did not know if they wanted that” as it would open them up to tickets. He reminded Council that the HOA could tow the vehicles since it was their parking lot.

Town Administrator Semmes reminded Council that the Town had an access easement.

Councilmember Snyder suggested this be discussed in the Utility Committee meeting. He agreed the Town did not want to be a burden; however, he noted that it wanted to maintain the tower properly. Mr. Snyder suggested they look at both sides of the issue.

Town Administrator Semmes explained that they were painting the inside of the tank, which required sand blasting. She noted that this required more equipment and materials, some of which could not fit within the fence enclosure.

Stuart Will, of IES, reported that the contractor had tractor trailer size equipment for the sand blasting and explained that it would not fit inside the fence; otherwise, he would have had them move it. He reported that he did get them to move their hopper so the trash truck could get to the dumpsters.

Councilmember Daly suggested there should be a requirement that if they damaged private property that it should be corrected.

Councilmember Snyder reiterated that this was worth discussing at the Utility Committee meeting. Town Administrator Semmes suggested they talk about the driveway. She noted that she had already asked that the contractor limit their impositions.

Councilmember Miller questioned whether there was another location in town where the equipment could be stored. Mr. Will confirmed it could be stored at the Town Shop and noted that he intended to discuss that with the contractor in the morning. He explained that he first wanted to speak with Mr. Alvarez. Mr. Will opined that his concerns were also with others accessing the site.

Councilmember Leonard-Morgan opined that \$40,000-50,000 was a lot of money. Councilmember Littleton opined that this was for the entire parking lot, not just the area in question.

Councilmember Snyder noted that this was the first time in ten years that the Town had resealed the tank.

Mayor Davis questioned how this was done in the past. Councilmember Snyder advised that it was simply done and no one said anything. Town Administrator Semmes explained that it was faster to paint the outside than the inside. She further explained that it must be sand blasted and two coats of paint applied. Ms. Semmes advised that because it would contain drinking water, the paint must cure for seven days and the tank must be disinfected. She further advised that two tests must be performed, twenty-four hours apart. Ms. Semmes reported that this would be a fifteen day project once the work started. She noted that she did not think they would be doing work at this point; however, it sounded like they were.

Mr. Will advised that they should have been on the site Tuesday; however, they did not arrive until Wednesday.

Town Administrator Semmes advised that she would make sure the contractor knew about the Town's noise regulations.

Councilmember Snyder noted that the Town knew the type of paint that would be used so it could verify that it met the specifications. He advised that painting a tank was complicated.

Councilmember Miller suggested the equipment be moved to the Town Shop if possible. Vice Mayor Kirk expressed concern that this could cause damage to the roads if it was moved every day and noted that Chestnut Street was not good already.

Mr. Will reported that the large trailer would be gone by this time next week.

Councilmember Miller asked that the Utility Committee determine how to maintain the tank in the future.

Mayor Davis questioned whether Well 4 was still down. Mr. Will confirmed it was; however, he noted that they had made significant progress. Town Administrator Semmes reported that some additional screens were installed under the filters of which the Town was not aware. She noted that their purpose was to keep the filters from getting blocked; however, the screens were blocked. Ms. Semmes advised that they had not been checked in the past; however, they now had. She noted the need to get some spares made so they would be available when the others were cleaned. Ms. Semmes advised that they brought the contractor back in and he was able to figure out the problem.

Town Administrator Semmes reported that she was pleased to attend the Loudoun Laurels Gala to honor Mayor Davis. She thanked Town Clerk North for her hard work on the reception and opined that it was very well received. Ms. Semmes noted the number of hours necessary to make it happen.

Councilmember Daly noted that the Town Administrator applied for the HEAL award from the Virginia Municipal League. He displayed the Gold Award that was received. Mr. Daly passed the award to Councilmember Leonard-Morgan, as the representative for Go Green.

Town Clerk North noted that the Council had a copy of the latest Council Action Tracker on their desks, as well as a summary of the Volunteer Appreciation Reception. She advised that the summary could be used as a basis for future events and noted that it also included thoughts for tweaks to the next one. Ms. North reminded Council that they had hoped that people would stand and mingle; however, that did not happen. She suggested the need to make sure there were enough chairs for everyone next year. Ms. North reported that she had also set up a tickler file to annually schedule the volunteer appreciation reception as a Council discussion item in June.

Councilmember Snyder opined that the reception was good and noted that volunteers made the Town what it was. He suggested it would be nowhere near as nice without them and opined that the reception was a good start to thanking them. Mr. Snyder suggested they continue in the future.

Town Planner Moore reported that the Planning Commission resumed its discussions with a potential developer looking to construct an assisted living facility in Middleburg. He advised that he was not sure he got a lot of traction with the Commission and opined that this was because they had not received a lot of information during the presentations. Mr. Moore noted that Councilmember Hazard suggested that if he wanted to move forward that he should come to the Council in the near future and opined that this may happen as early as next month.

Councilmember Littleton questioned whether the presentation would be made by Councilmember Hazard or the developer. Town Planner Moore confirmed it would be by the developer.

Councilmember Littleton questioned whether this was a by-right use. Town Planner Moore confirmed it was not and noted that there were a multitude of issues associated with this request. He explained that the Town had a constrained use defined in the zoning ordinance for assisted living facilities that were for six or fewer persons and opined that the ordinance was designed for one specific use. Mr. Moore advised that there was no use defined in the Town Code for something on the scale that was being proposed. He noted that he had outlined a process that would be required that would include a Comprehensive Plan amendment, zoning text amendments, a possible rezoning and possibly a special use permit. Mr. Moore advised that a lot of things must occur before this development could happen. He suggested the need to get as much information as early on as possible.

Councilmember Littleton inquired as to the number of units the developer envisioned. Town Planner Moore reported that the number had been changing. He noted that he recently made an analogy of it to the Salamander Resort in that it started out as small and grew. Mr. Moore reported that in the few months he had been in discussions with this individual, the number had gone from seventy-five to one hundred to one hundred twenty units.

Councilmember Snyder noted that this would have a huge impact on the town.

Councilmember Miller noted the number of trucks needed to supply it and the traffic it would generate.

Town Planner Moore advised that the developer's presentations were lacking in substance. He noted that they have met on numerous occasions to discuss the project and advised that this individual also met with Business & Economic Development Director Gaucher, who outlined the things the developer needed to outline in order to present the benefits of the project.

Town Planner Moore reported that he issued a zoning permit for the demolition of an existing home at 105 Sycamore Street, which would be replaced with a new one. He reminded Council that a couple years ago, an owner tore down an existing house in order to do infill development and noted that this would be similar. Mr. Moore explained that this was a by-right operation and advised that the plans have been submitted for the new home, which met all of the applicable zoning regulations.

Vice Mayor Kirk advised that she would like to see the plans.

Town Planner Moore noted that the owner explored the option of an addition. He advised that this would eliminate a nonconforming use as the existing house sat too close to the property line.

Town Administrator Semmes reminded Council that the Town had the option of implementing a town-wide architectural review district as it did a charter amendment a few years ago. She noted that the Council at that time decided not to move forward with it.

Town Planner Moore advised Council that there would be no aesthetic review of the plans and noted that the review would be limited to items such as lot size and footprint limitations.

Councilmember Snyder noted that most of the development in Ridgeview was infill development.

Councilmember Littleton reminded Council that this could be a white marble and glass house.

Councilmember Leonard-Morgan noted that four zoning permits had been issued for retail. He opined that this was good and noted that he was not aware of them.

Town Planner Moore advised that one was in a very apparent vacant space, next to the Middleburg Common Grounds, which formerly housed Hastening Antiques. He noted that Hastening Antiques was re-opening on Madison Street. Councilmember Littleton noted that they were relocating to the old pharmacy building.

Councilmember Leonard-Morgan inquired as to what LeBoudoir, LLC was. Town Planner Moore advised that this was a custom bra retailer.

Mayor Davis inquired as to what Celeste Verrone did. Town Planner Moore reported that this was the name of a vendor in the Middleburg Antique Emporium.

Councilmember Leonard-Morgan noted that Kizmetz received a zoning permit. Town Planner Moore noted that it would be located next to the Middleburg Common Grounds. He reminded Council that the Business & Economic Development Director provided them with information on that business.

Councilmember Snyder noted that he was impressed that the staff had herded the feral cats on the south end of Pendleton Street. Town Planner Moore noted that they were able to clean up this area and relocated the cats with the cooperation of the individuals who had been feeding them.

Town Treasurer Bott reported that the vehicle decal bills went out this week and the real estate tax bills would go out later in the month. She advised that the Town was in receipt of a draft MOU from Loudoun County on cooperative tax billing and noted that a meeting was scheduled for the end of the month to hash out the details of the draft. Ms. Bott advised Council that the MOU would be brought to them for their approval.

Mayor Davis asked that future Treasurer's reports be put in a landscape view. Town Treasurer Bott confirmed she would do so.

Chief of Police Panebianco reported that an amazing educational event on code programing was held at the Middleburg Charter School that included Ivanka Trump, the CEO of Microsoft and the creator of Code.Org. He advised that it was interesting to see how the children enjoyed learning code and noted that the system captivated the kids and kept their attention. Chief Panebianco advised that the CEO of Microsoft was on his knees working with the kids, as was Ivanka Trump and the creator of Code.Org. He opined that this was a crowning moment for the Charter School and noted that you could see the pride in the principal and teachers' faces.

Councilmember Snyder noted that Bill Gates had a lot of experience doing that and shepherded these types of educational efforts.

Mayor Davis noted that one student offered a suggestion for a way to improve Minecraft.

Chief Panebianco opined that the program was not done as a show. He advised that the press was there; however, after they left the room, the program continued. Chief Panebianco noted that each of them spent time with every child in the room. He advised that you could tell that they cared about the school. Chief Panebianco reiterated that this was a big event for the charter school.

Chief Panebianco noted that he had very robust meetings with his partners in law enforcement in Northern Virginia. He reported that they recently had one in which they discussed pop-up protests. Chief Panebianco advised that he realized the department needed additional equipment to protect the officers, which would require a budget amendment. He noted that it was not a lot of money and suggested it would be less than \$5,000 for the equipment and training. Chief Panebianco advised that if something happened in Middleburg, which he hoped it would not, he did not want the officers to not be involved. He suggested they must be on the front lines to protect the values of the community.

Councilmember Miller inquired as to the amount of time it would take for Loudoun County to respond. Chief Panebianco advised that it would be a quick response by the County; however, if the Town needed a Civil Disturbance Unit or the State Police, it could take hours. He noted that in that case, it would fall on the line officer to help quell any issues. Chief Panebianco reminded Council that these were not cases in which the people were getting permits and advised that they were just showing up and protesting. He equated having this equipment and training to CPR, in that the officers would have the skills and hoped they never needed it. Chief Panebianco advised that the Town owed it to the officers and citizens to get this protection so the officers could manage what could occur. He noted that if the State Police deployed gas, the officers had no gas masks and would have to leave the scene, which they did not want to do.

Town Administrator Semmes clarified that the Chief was talking about the purchase of gas masks.

Councilmember Miller opined that this was an operational item.

Vice Mayor Kirk noted that the Chief's report indicated the department did ten sets of finger prints. Chief Panebianco confirmed the department did finger printing as a service to the community for people for who were looking to apply for licensing, jobs, etc. He noted that they did not charge for it. Chief Panebianco advised that if someone went to Loudoun County for this service, they must go through a process to get it done.

Vice Mayor Kirk noted the animal complaints listed in the report and questioned whether they were for loose or loud animals. Chief Panebianco noted that he would have to look into; however, it was usually for dogs locked in cars. He advised that they occasionally received a complaint for barking dogs, but not often. Chief Panebianco noted that if someone left a dog in a parked car, they would get a call regardless of the weather. He advised that in that case, the officer would explain the rules to the owner unless it was a repeat offender, in which case, they would call animal control to deal with it. Chief Panebianco reported that law enforcement officers now had the authority under the State Code to break a window if a dog was suffering.

Councilmember Littleton noted the previous discussion about parking at the water tower, in which the Police Department had no permission to enforce the parking regulations. He inquired as the number of private parking areas in town. Chief Panebianco advised that they could not enforce the parking regulations in all of the HOA areas, such as in the Fox Run Subdivision and on Orange Drive. He explained that they could respond to a call; however, they could not go onto the property for an illegally parked car. Chief Panebianco noted that if they received a call, they would respond and tell them that it was their property and that they could have the vehicle towed. He opined that the HOAs didn't want to give the Police Department the ability to enforce the parking regulations as they could write tickets for things such as not having a Town sticker. Chief Panebianco noted that the officer would not pick and choose what to enforce and advised that it was either all or nothing.

Councilmember Daly advised that his HOA had allowed their lot as an easement to the Town. He opined that Councilmember Littleton did not have an HOA in his area.

Councilmember Littleton confirmed he did not and noted that the individual property owners own the property into the right-of-way. He questioned whether the Police Department would be interested in having a form letter that people could fill out if they would like for the Department to enforce parking in their area so it would be easy for them to do so.

Chief Panebianco confirmed they could; however, he did not want to solicit them to do so. He explained that if someone was issued a ticket, they would say "they tricked us". Chief Panebianco suggested the HOA should come to the Town.

Councilmember Littleton suggested the Chief be up front with them about the ability to ticket. He opined that, overall, this would be a good thing to do and advised that he hated that they could not.

Chief Panebianco advised that they occasionally bluffed someone or they advised the complainant of the remedies. He noted that this also kept the Town from being the towing agent. Chief Panebianco noted that this became the HOA's responsibility, which put the liability on them for any damage.

Councilmember Littleton expressed concern for public safety.

Councilmember Daly suggested this was something the president or an officer of the HOA could approve. He further suggested the HOA could ask to be incorporated into the town, which would mean the Town would acquire the responsibility for the water pipes, lighting and upkeep of the parking lots. Mr. Daly opined that it would be up to the Town to negotiate that.

Mayor Davis questioned whether these areas were a part of the town. Town Administrator Semmes confirmed they were. She explained that these were simply their parking lots.

Mayor Davis questioned why those residents would not have to have a Town sticker. Councilmember Snyder noted that they must have one when they were parked on a public street; however, they were parking on a private lot.

Councilmember Miller opined that the Police Department could not write a ticket if the car was parked in a private driveway if the sticker was expired. Mayor Davis opined that they should be able to do so. Chief Panebianco noted that there was a limitation on an officer's authority. He opined that they should not be able to go everywhere, every time. Chief Panebianco noted that if they had a repeat violator, an officer would wait up the road and then give them a ticket. He asked the Town Planner to advise the company that they needed to have someone who was able to move their vehicle if there was a medical emergency. Chief Panebianco suggested the trailers must stay hooked up to a truck. Town Planner Moore advised that he would pass that suggestion along to Stuart Will. Councilmember Snyder noted that this was something the utility maintenance company needed to address. He reiterated that it would be a topic of discussion by the Utility Committee at their meeting next week.

Councilmember Littleton advised that it was a safety issue when a vehicle owned by a company that the Town contracted with went to a private lot to do work. He noted that this was an issue of creating a public safety issue if an emergency vehicle could not access the parking lot or the houses. Mr. Littleton noted that if someone was having a heart attack at 3:00 a.m., the HOA President would not call a towing company. He suggested this was something that needed to be discussed.

Town Planner Moore noted that there was enforcement authority for parking in fire lanes on private property. He suggested this may be something for the Fire Marshall. He confirmed this was a designated fire lane.

Councilmember Littleton noted that there were no fire lanes in his development; however, if two cars were parked on opposite sides of the street, nothing could enter.

Chief Panebianco noted that he was happy to meet with Mr. Alvarez and advised that this was the first he had heard of this issue.

Town Attorney Crim recommended that for the ease of administration, the Council delegate the authority to sign leases for up to five years to the Town Administrator, particularly Health Center leases. He noted that they would still require Council approval and a vote and reiterated that he was suggesting they give her the authority to sign the leases.

Town Attorney Crim noted that blight abatement would be on Council's agenda next month and advised that he was working with the staff on tools to deal with this that would best fit the Town's needs. He reported that there could be spot blight abatement. Mr. Crim opined that it would come down to whether there was political will to spend money on this. He advised that frequently, a property owner would not maintain their property. Mr. Crim noted that the locality had the power, if they adopted an ordinance, to require the owner to do the work and if they did not, the locality could step in to fix it and put a lien on the property. He advised that because this would tie up public funds, it was a major policy issue. Mr. Crim reiterated that it would be discussed next month.

Town Attorney Crim reported that he reviewed a contract with Paymentus to accept online credit card payments and provided the staff with his comments.

Town Attorney Crim reported that next month, he would attend a luncheon of Loudoun County government attorneys. He further reported that he was attending the Northern Virginia Town Association meeting next week.

Town Attorney Crim reported that he received a fully written MOU for consolidated tax billing between the Town, Leesburg and the County. He noted that they were meeting to discuss this in more detail and find out why it was written the way it was.

Reports of Town Committees/Council Liaisons

Councilmember Snyder reported that Bluemont was at the Middleburg Charter School a week ago for an arts and education program that consisted of folk music. He advised that it was well received and noted that the entire school was in the auditorium. Mr. Snyder advised that the kids were moving around and noted that it was a pleasure to attend.

Vice Mayor Kirk reported that the ad-hoc committee on the town properties was scheduled to meet next week. She noted that Go Green's report talked about charging stations for electric vehicles. Ms. Kirk reported that the Salamander Resort had charging stations and suggested that Go Green may want to talk to them about their usage and recommend their use to people.

Councilmember Leonard-Morgan noted that Middleburg was the mid-way point between Winchester and Alexandria and suggested this could be a theme for visitors that had electric vehicles. He advised that he heard that GMC would only be producing electric vehicles a few years from now and suggested this was inevitable.

Councilmember Leonard-Morgan noted that Go Green talked about recycling and trash collection for businesses. He reminded Council that the collections were held on the same frequency as for residents. Mr. Leonard-Morgan noted that some businesses had their own dumpsters; however, some did not have a location for one, including the oyster bar. He opined that having shells sitting for five days was a scary concept. Mr. Leonard-Morgan advised that he would like to talk about this more in the future.

Councilmember Leonard-Morgan noted that Go Green was talking about the next date for a HEAL Expo and 5k, which they would like to do again.

Councilmember Snyder opined that restaurant refuse was a discussion the Council needed to have if the Town wanted to encourage restaurants to locate here. Vice Mayor Kirk agreed.

Discussion Items

Annual Holiday Party/Gift Certificate Program/Cancellation of Work Sessions

Town Clerk North reminded Council that they typically held an annual holiday party on the second Friday in December. She noted that last year, they did hold it on the third Friday. Ms. North reminded Council of the need to find someone who was willing to organize the party. She also questioned whether the Council was interested in offering the gift certificate program again this year. After some discussion, the Council agreed it would hold the annual holiday part on December 8th at 12:00 noon. Councilmember Miller volunteered to organize it. The Council also agreed to offer the gift certificates and to cancel the November and December work sessions as they conflicted with the holidays.

Late fee for past due parking tickets

Chief Panebianco advised Council that the Town was now able to issue DMV stops. He reported that since implementing the new system, they had issued two hundred three tickets, of which thirty-nine were dismissed and one hundred twenty-seven were paid. Chief Panebianco advised that of those, sixty-four percent were paid online. He reminded Council that if someone had not paid after forty-five days, he could issue a DMV stop, which he had done on ten vehicles. Chief Panebianco reported that of those, three paid the fines and had the stop removed. He noted that therein laid the issue and explained that while the DMV did not charge the Town to put a stop on, it charged a \$25 fee to take it off. Chief Panebianco reiterated that the Town would get a \$25 bill for each stop that was removed. He questioned whether the Council felt it was worth adding a new fee to the parking tickets that would cover the cost of removing the stops. Chief Panebianco advised that if this was the Council's wish, this fee would be added to the fee schedule and would be explained in the letters that were sent to the violator. He further advised that if they chose to do this, it would not require a software update as it would be handled as a manual entry by the Administrative Assistant.

Town Clerk North advised Council that the Town did not have the authority to do this as a fee to recoup the Town's costs, but rather this would be handled as an additional late fee that would automatically be applied after a ticket was forty-five days past due. Chief Panebianco advised that he was okay handling in whatever manner it needed to be handled.

Councilmember Miller questioned how much had been collected at the time the DMV stop was placed. Chief Panebianco reported that the Town would have collected \$0. Town Clerk North advised that if a ticket was not paid after seven days, a \$25 late fee was applied and if it was not paid within forty-five days, a DMV stop was placed. She advised that, at that point, the individual would owe the Town \$55.

Chief Panebianco noted that it was up to the Council to decide whether it wished to recoup this cost. He reminded Council that there was a process to do so. The Council agreed it wished to collect a fee if the Town must go through the process to place a stop.

Councilmember Daly noted that the Town was talking about ten individuals. Chief Panebianco opined that it would apply to five percent of the tickets written.

Councilmember Snyder noted that there may be a concern politically. He cited as an example the concerns that have been expressed in other localities if a DMV stop was put on for unpaid court fines, which effectively precluded the individual from having the ability to drive back and forth to his/her job. Mr. Snyder noted that he did not know whether that had reached any municipal levels; however, it had reached the county and state levels. He suggested the need to be aware of that discussion.

Chief Panebianco noted that there was litigation in other states regarding the argument described by Councilmember Snyder; however, this was for the suspension of a driver's license. He explained that the Town was not saying a person could not drive and noted that the stop would just prevent them from renewing their vehicle license.

Chief Panebianco noted that the other issue was that he could issue stops through the Virginia Department of Motor Vehicles only. He advised that he could also not issue stops on dealer vehicles. Chief Panebianco questioned whether the Town was treating the citizens of the Commonwealth differently. He suggested that a remedy, if an individual was not eligible for a DMV stop, was to turn the ticket over to a collection agency. Chief Panebianco noted that this would provide a repercussion for everyone.

Councilmember Littleton suggested the premise was different. He opined that they were not treating citizens differently as the officers were ticketing a car and noted that it could be a company car registered in Virginia that was driven by a Maryland resident. Mr. Littleton advised that the enforcement was against the car; therefore, they were not treating citizens unfairly.

Mayor Davis questioned whether the Town could charge a \$25 late fee if the car was from Maryland and the ticket was not paid. Town Attorney Martin noted that if this was a “late fee”, the Town would charge the \$25. He advised that the question was how to collect it. Mr. Crim noted that there would always be collection issues.

Chief Panebianco reiterated that he could not put a stop on dealer tags. He advised that if an individual was in the military, they were not required to register their vehicle in Virginia; therefore, they could live here and get tickets daily and never pay them. Chief Panebianco advised that he was not advocating anything; however, he wanted to offer the options that were available. He noted that he was only providing the Council with what he had heard and observed. Chief Panebianco reiterated that the \$25 DMV fee to lift the stops was there even though the Town had not yet received a bill. He noted that there was no line item in the budget to pay the costs; therefore, he did not know where to take the money from.

Councilmember Snyder opined that it would be taken from the fine revenue that was collected. He advised that he was not sure he wanted to “slice and dice” this to be able to collect from people in other states. Mr. Snyder opined that the Town had an effective solution to make sure parking was available in town with the three hour limit. He suggested the Town not lose sight of the purpose for the ordinance, which was to turn over the parking spaces. Mr. Snyder opined that the job the department was doing was effective.

Chief Panebianco opined that three hours was the right time frame as only eighteen percent (18%) of the tickets were for overtime parking.

Vice Mayor Kirk advised that she wanted to collect the \$25 and suggested it be done as a late fee. She asked who would bring this back to the Council and when. Town Clerk North advised Council that she would prepare the necessary ordinance amendment and noted that it must be advertised for a public hearing.

Councilmember Littleton suggested that as to dealer cars, the staff should bring a recommendation to the Council. Mayor Davis questioned whether this was an issue. Chief Panebianco reported that one out of ten cars had dealer tags and reiterated that the Police Department could not deal with those.

Mayor Davis suggested this only be addressed if it was an issue. Chief Panebianco suggested he review this again in six months. Councilmember Snyder noted that as long as it was an insignificant number, he was okay with that.

In-House Parking Study

Chief Panebianco distributed an addendum to the in-house parking study, which contained a listing of which side streets were also counted. He advised that he did not know what he could add to the report; however, he was happy to answer any questions.

Vice Mayor Kirk suggested the information be fed to a company that knew what to do with the numbers. Chief Panebianco noted that he was not comfortable saying what the study meant and advised that this something for an engineer to say.

Councilmember Snyder suggested that now that the Town had the data, it could hire an engineer to perform a limited analysis and make a recommendation. He advised that he would anticipate that it would take thirty to forty hours at most.

Town Administrator Semmes reminded Council that she researched companies that did this type of work and obtained some cost estimates. She advised that she could share this information with them and ask for a revised cost figure. Ms. Semmes asked the Chief to review what the study covered.

Chief Panebianco reminded Council that he looked at the three hour zones and the parking lots where the majority of the businesses were located. He advised that the study area included The Plains Road to Liberty Street, including Federal and Washington Streets, as well as the side streets. Chief Panebianco noted that this was the area where they typically did parking enforcement. He advised that he did not do what the former study did, which was to only pick three days, and advised that this study was done over a two week period. Chief Panebianco noted that he even came out on a Saturday to make sure that what he was seeing was consistent with what his staff found and advised that it was. He opined that it provided a good picture of the parking, excluding a large event such as Christmas in Middleburg. Chief Panebianco noted that the data sheets also included the weather on those days.

Councilmember Snyder opined that this was a good study. He noted that previous ones did not include Christmas in Middleburg, which was not reasonable.

Chief Panebianco noted that he broke the numbers down as best he could and advised that he rounded them. He explained that he wanted to offer as many scenarios as possible. Chief Panebianco noted that he did not think to gather information on the few parking spots that were located on the far end of Washington Street and advised that they were typically empty. He opined that as more food options became available on that end of town through the new restaurants, this situation may be rectified.

Town Administrator Semmes noted that the Chief only looked at his enforcement area. She suggested that if someone else looked at this, they may want to add the eight hour parking that served the offices and as overflow parking. She opined that there was a lot of parking between the Episcopal Church and the gas station.

Councilmember Daly noted that a lot of it was empty throughout the day. He advised that it was less than a mile in either direction of the traffic light; however, people complained of no parking being available. Mr. Daly suggested that while it may not be in front of the location where they wanted to go, there were spaces available elsewhere that were within walking distance. He opined that the Town was dealing with perceptions.

Councilmember Miller noted that not everyone was able to walk and reminded Council that Middleburg's population was aging. Chief Panebianco noted that the Town offered six handicapped parking spaces, three of which were in one lot. He advised that he did not look at the private parking lots, as the Town did not control that parking. Chief Panebianco advised that there were two handicapped parking spaces on Washington Street, one on Pendleton Street and three in the Liberty Street Parking Lot. He suggested the Council have an engineer look at whether there was enough handicapped parking and noted that he could not answer those questions. Chief Panebianco reported that he color coded the information he provided.

Councilmember Miller thanked Chief Panebianco for providing some good information. He noted that he and the entire Police Department did a lot of work.

Chief Panebianco advised that he was proud of the department and noted that he had a great staff that did what they needed to do. He advised that this was a team effort and expressed hope that it would serve the Council in some form.

Councilmember Snyder opined that it was good data and advised that it would save the Town money on further analysis.

Chief Panebianco expressed an assumption that the Town would be restriping Madison Street soon. He advised that he looked forward to some of yellow lines being repainted so the Police Department could enforce the regulations better.

Councilmember Miller opined that the next step was to hire a consultant that knew about parking behavior who would tell the Town what it needed to do. He noted the need for a proper analysis of the data.

Town Administrator Semmes advised Council that she would share the data with the two groups that she previously spoke with and would get updated cost information.

Councilmember Littleton noted the need to identify the questions that the Council wanted answered. He suggested that some of them would be “Do we have enough parking?”, “Is there a time issue?” “Is there a traffic flow issue?” He noted that the Council had data on the number of occupied parking spaces; however, he questioned whether flow made a difference.

Councilmember Daly suggested that another question was “Do we have enough disabled parking on Washington Street?”

Councilmember Leonard-Morgan noted that with the opening of four new stores and the oyster bar, the dynamics may change.

Chief Panebianco advised Council that, if desired, the department could do another study later. He explained that he wanted to make sure that what they were seeing was not a fluke; therefore, they did it for two weeks. Chief Panebianco advised that they could do whatever time period the Council wanted them to; and, reiterated that if they needed them to do it again, they would. He advised that he could not tell the Council what the data meant.

Councilmember Snyder opined that the Police Department did a good job of collecting and presenting the data. Councilmember Miller opined that it was easier to read than the last study.

Councilmember Leonard-Morgan opined that there were “hot spots” in certain spaces. Councilmember Snyder opined that this would move as businesses moved around.

Councilmember Miller advised that from a retail perspective, there were formulas for the amount of parking needed and where it needed to be to meet behavior. He noted that he wanted it to be easy for someone to come to town, park, and shop and dine. Mr. Miller suggested the need for a professional analysis.

Councilmember Littleton suggested the consultant would look at the businesses, where they were located, their hours, as well as where other facilities were located such as the post office. He advised that they would anticipate behavior. Mr. Littleton reiterated that the Council needed to think about the questions it wanted answered. He questioned whether there was enough disabled parking for the Town’s mix of businesses and the age of the community. Mr. Littleton opined that this question had never been asked.

Chief Panebianco suggested the need to address the perception that there was not enough parking. He advised that he tried to call WTOP a year ago when they announced that Middleburg had one of the top ten parking problems in the region. Chief Panebianco expressed hope that this had been addressed as they were more spaces available and they were better marked.

Councilmember Miller opined that the problem was clustered in spots, such as the area where the bank, post office and coffee shop were located. He suggested that the reason retailers and people went to malls was because there was plenty of parking. Councilmember Daly noted that one could watch people circling the mall lot for a half an hour searching for a space near their destination.

Town Administrator Semmes opined that Councilmember Littleton made a good point and advised that she would talk with the consultant about the questions that needed to be answered. She further advised that she would try to come up with a scope of work. Ms. Semmes suggested the need to look at the private parking supply and noted that there were numbers in the zoning ordinance for how much parking different uses provided. She opined that some of the parking lots that were created may not be big enough and noted that they did help meet the demand.

Councilmember Leonard-Morgan opined that removing the parking meters was a huge deal and suggested that many issues were resolved as a result.

Information Items

Councilmember Littleton announced that a couple of weeks ago, he submitted an application to serve on the Executive Committee of the Virginia Municipal League and reported that he was elected. He further reported that they would meet four times a year. Mr. Littleton noted that he recently had an hour long call with their General Counsel, who was also serving as the Acting Executive Director. He advised that it was a great conversation and opined that VML was doing a lot of good things. Mr. Littleton noted that they were trying to figure out a way to move their agenda forward and to engage with the General Assembly. He suggested it would be good to think about the things that the members thought were a priority for small towns on which the General Assembly should focus. Mr. Littleton noted that he was happy that the VML focused on the 5G bill and the Air Bnb bill last year.

Mayor Davis thanked Councilmember Littleton for stepping up and filling this role.

Closed Session – Appointment to BZA; Employee Bonuses and Legal Advice of Counsel

Vice Mayor Kirk moved, seconded by Councilmember Daly, that Council go into closed session as allowed under the Virginia Freedom of Information Act Sections 2.2-3711(A)(1) and (8) pertaining to the discussion, consideration or interviews of prospective candidates for employment, assignment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees and for consultation with legal counsel employed or retained by the public body regarding specific legal matters requiring the provision of legal advice by such counsel. Vice Mayor Kirk further moved, seconded by Councilmember Daly, that these matters be limited to (1) an appointment to the Board of Zoning Appeals, (2) employee bonuses for the completion of a special project and (3) the provision of legal advice by the Town Attorney related to the applicability of a Town Code provision. Vice Mayor Kirk further moved, seconded by Councilmember Daly, that in addition to the Council, the following individuals be present during the entire closed session: Martha Mason Semmes and Martin Crim. Vice Mayor Kirk further moved, seconded by Councilmember Daly, that the following individuals also be present for a portion of the closed session: Rhonda North and Will Moore for the first part and Ashley Bott for the third part. Vice Mayor Kirk further moved, seconded by Councilmember Daly, that the Council thereafter reconvene in open session for action as appropriate.

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

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

Councilmember Miller moved, seconded by Vice Mayor Kirk, that the Council direct the Town Administrator to proceed with awarding bonuses as directed in the closed session.

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

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that the Council ask the Court to appoint Bundles Murdock to the Board of Zoning Appeals to serve the remainder of the term of Kathy Ribaud.

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

There being no further business, Mayor Davis declared the meeting adjourned at 8:17 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk