



**MIDDLEBURG TOWN COUNCIL  
REGULAR WORK SESSION  
MINUTES**



**Thursday, May 26, 2016**

**PRESENT:** Mayor Betsy A. Davis  
Councilmember Kevin Hazard  
Councilmember Trowbridge Littleton  
Councilmember Catherine “Bundles” Murdock  
Councilmember Kathy Jo Shea  
Councilmember Mark T. Snyder

**STAFF:** Martha Mason Semmes, Town Administrator  
Cindy C. Pearson, Economic Development Coordinator  
William M. Moore, Town Planner  
Ashley M. Bott, Town Treasurer

**ABSENT:** Vice Mayor Darlene Kirk

The Town Council of the Town of Middleburg, Virginia held their regular monthly work session on Thursday, May 26, 2016 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 5:30 p.m.

**Closed Session** – Personnel/Appointment to Town Council

*Councilmember Murdock moved, seconded by Councilmember Littleton, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(1) for the discussion, consideration or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of the public body. Councilmember Murdock further moved, seconded by Councilmember Littleton, that these matters be limited to an interim appointment to the Town Council. Councilmember Murdock further moved, seconded by Councilmember Littleton, that in addition to the Council, the following individuals be present during the closed session: Martha Mason Semmes (absent) and Rhonda North. Councilmember Murdock further moved, seconded by Councilmember Littleton, that the Council thereafter reconvene in open session for action as appropriate.*

Vote: Yes – Councilmembers Littleton, Murdock and Shea

No – Councilmember Snyder

Abstain: N/A

Absent: Vice Mayor Kirk and Councilmember Hazard

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

-----  
(Councilmember Hazard arrived at the meeting at 5:40 p.m.) (Councilmember Shea left the closed session at 5:48 p.m.)

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.

Mayor Davis recessed the meeting from 5:57 to 6:00 p.m.

### **Council Presentation & Approval** – Website Development Contract

Town Administrator Semmes reported that the Economic Development Advisory Committee met this week and agreed with the review committee's selection of Revize.

Mayor Davis noted that while she did not serve on the review committee, she thanked the members for doing a good job reducing the number of vendors. She reported that while all of the vendors were good, this company provided everything the Town needed and was well versed in government websites. Ms. Davis opined that they did a good job with towns in general and offered a look that was not just government like. She noted that they also had the tools the Town needed.

Councilmember Snyder noted that the Council was provided with three options with regard to the number of years for the contract. He questioned whether the contract would be iron clad if the Council entered into a four year one and questioned whether the Town could get rid of the vendor if it was not doing the job. Mr. Snyder expressed an assumption that the Town was committing to maintenance and support during the additional years.

Town Administrator Semmes confirmed it was. She noted that the vendor must perform and advised that there were ways for the Town to get rid of it if it was not meeting its contract obligations.

Councilmember Snyder advised that he was comfortable with a four year contract as long as it did not tie the Town's hands if they were not performing to the Town's satisfaction.

Councilmember Shea noted that the contract limited the number of times the Town could give the vendor input with regard to the original design. She advised that she would like to see a plan for how that input would be gathered before sending the vendor any information and asked that it come to the Council.

Town Administrator Semmes reported that the RFP contained additional information regarding the process and EDAC's involvement and explained that it talked about having a broad sector of people involved. She advised that even before it came to the Council and before there were alternative designs, there would be a brainstorming session with people. Ms. Semmes noted that work sessions would be held to make sure no good ideas were left behind. She advised that while the vendor may be a good designer, the website would be content driven and would contain the features that Middleburg wanted. Ms. Semmes noted that it needed to be useful to residents, businesses and visitors.

Councilmember Shea asked that Go Green's input be included with regard to the green shopping guide. She asked whether the entire staff would be trained on the website. Ms. Shea advised that she did not want the events calendar to be set up so new information could not be added if the Economic Development Coordinator was on vacation.

Town Administrator Semmes confirmed that as many employees could be trained as the Town wanted. She advised that this was usually those people who were changing the content on a regular basis. Ms. Semmes opined that there was no need for the entire staff to be trained. She advised that the Police Department would be trained so they could alter their portion of the site.

Councilmember Shea noted that she liked the portion of the contract that indicated that the data would remain Middleburg's even if it changed vendors.

*Councilmember Snyder moved, seconded by Councilmember Shea, that Council authorize the Town Administrator to execute a four-year contract with Revize Software Systems for professional website development, maintenance and hosting services, including the "Revize Client First Plan", in a form approved by the Town Attorney.*

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

No – N/A

Abstain: N/A

Absent: Vice Mayor Kirk

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

---

Councilmember Murdock noted the E-Notify feature. She questioned whether emergency notifications, such as water line breaks, could be sent to people who signed up for this service. Town Administrator Semmes expressed an assumption that they would.

Mayor Davis noted that there was a feature that would allow someone to report something they noticed, such as a downed street sign.

Councilmember Murdock reiterated that she liked the E-Notifications and noted that they would not replace the automated phone system. She advised that she would like to receive e-notifications.

**Council Approval** – Appropriations Ordinance - FY '17 Budget

Town Administrator Semmes reminded Council that she provided alternative cuts to the budget that would allow the real tax rate to be reduced to sixteen and half cents. She further reminded them that the rate was currently seventeen cents. Ms. Semmes noted the need to reduce expenditures by \$16,000 in order to reduce the tax rate and reiterated that she has provided some alternatives. She noted that the website costs were less than anticipated and suggested this would be an easy cut. Ms. Semmes advised that another option was to cut the government space planning money as she did not believe \$100,000 was needed.

Mayor Davis noted that in looking at the summary of the budget items on the cover page of the agenda item, it did not appear that the Health Center Fund was included in the total budget amount. Town Administrator Semmes confirmed it should be and recommended it be added. Councilmember Snyder noted that the motion did not include a final dollar amount.

*Councilmember Snyder moved, seconded by Councilmember Shea, that Council adopt an ordinance to Approve the Budget, Adopt Tax Rates and Make Appropriations for the Fiscal Year ending June 30, 2017, with a real property tax rate of \$.165.*

Town Administrator Semmes questioned what the Council wished to cut from the expenditures in order to allow for the reduced tax rate. After some discussion, the Council agreed to take \$10,000 from the website design line item and \$10,000 from the government space planning line item.

Vote: Yes – Councilmembers Hazard, Littleton, Murdock, Snyder and Shea  
No – N/A  
Abstain: N/A  
Absent: Vice Mayor Kirk  
(Mayor Davis only votes in the case of a tie.)  
(by roll call vote)

---

**Council Discussion & Approval** – Go Green Recommendations

Councilmember Shea reminded Council that Go Green previously presented its recommended Sustainability Plan and asked for their feedback. She advised that they would like to finalize it so they could send it to the Planning Commission, HDRC and other Town committees.

Councilmember Snyder noted that the document contained typographical errors; however, he was happy to approve it, with the Town Clerk addressing the errors.

*Councilmember Shea moved, seconded by Councilmember Snyder, that Council adopt the Middleburg Sustainability Plan as presented by the Go Green Committee.*

Vote: Yes – Councilmembers Hazard, Littleton, Murdock, Snyder and Shea  
No – N/A  
Abstain: N/A  
Absent: Vice Mayor Kirk  
(Mayor Davis only votes in the case of a tie.)

---

**Addition of Items to the Agenda**

*Councilmember Snyder moved, seconded by Councilmember Shea, that the Council add item 7A (Council Approval – Approval of Performance Agreement & Acceptance of Surety – 109 West Marshall Street) and item 7B (Council Approval – Release of Performance Bond – Federal Street Office Building Project) to the agenda.*

Vote: Yes – Councilmembers Hazard, Littleton, Murdock, Snyder and Shea  
No – N/A  
Abstain: N/A  
Absent: Vice Mayor Kirk  
(Mayor Davis only votes in the case of a tie.)

---

**Council Approval** – Performance Bond & Surety – 109 West Marshall Street – Tim Clites

Town Planner Moore advised Council that this was a small bond amount for a small project. He noted that the applicant has been working for a while to get this approved and explained that this action would clear the release of the site plan so he could move forward with his permitting.

*Councilmember Murdock moved, seconded by Councilmember Snyder, that the Council approve and authorize the Mayor to sign a performance agreement, to include the acceptance of a surety in the amount of \$10,000, from Tim Clites related to his site plan for the conversion of 109 West Marshall Street from a residential use to an office use.*

Vote: Yes – Councilmembers Hazard, Littleton, Murdock, Snyder and Shea  
No – N/A  
Abstain: N/A  
Absent: Vice Mayor Kirk  
(Mayor Davis only votes in the case of a tie.)

---

**Council Approval** – Release of Performance Bond – Federal Street Office Building Project

*Councilmember Murdock moved, seconded by Councilmember Littleton, that Council approve the release of the performance bond, in the amount of \$230,522, held for the installation of public improvements associated with the Federal Street Office Building Project.*

Vote: Yes – Councilmembers Hazard, Littleton, Murdock, Snyder and Shea  
No – N/A  
Abstain: N/A  
Absent: Vice Mayor Kirk  
(Mayor Davis only votes in the case of a tie.)

---

**Annual Report** – Middleburg Arts Council

Peter Wood, Chairman of the Middleburg Arts Council, thanked the Council for their continued support of the arts and noted that it was nice as an artist to know that when they came before them that they would be supportive. He reported that the Arts Council had scheduled Art in the Burg for May 21; however, it was postponed to July 23 due to rain. Mr. Wood advised that it would be held the same weekend as the National Sporting Library’s Carriage Show. He noted that the move gave people more time to be aware of the event. Mr. Wood reminded Council that outdoor events were dependent on the weather; however, he opined that it would be successful.

Mr. Wood reported that the Arts Council would continue to hold Art in the Pink Box. He noted that they had artists present at the Fall Races. Mr. Wood reported that they organized an exhibit at the Byrne Gallery, which went well. He noted that the Gallery sold several pieces that were in the show. Mr. Wood opined that this was a wonderful event as the Town did not have to spend money to create it.

Mr. Wood reminded Council of the funding they provided for the creation of an artisan trail and advised that the other jurisdictions that were approached also contributed. He reported that a management team has been formed, under the auspices of the Artisans Center of Virginia, and noted that the establishment of the trail would be announced within the next month. Mr. Wood advised that there would also be a naming event. He reported that over the next year, the organization would work to get businesses to sign onto the project. Mr. Wood reported that in talking with the Executive Director, she was impressed with the organization within Loudoun County and indicated this was the first artisan trail that would have launched within a year.

Councilmember Snyder asked that the Arts Council get more involved with the Bluemont concerts. He noted that they had an education program for the public and private schools. Mr. Snyder advised that Bluemont relied on grant money and donations. He requested the Arts Council reach out to them and noted that this should not impact their budget.

Mr. Wood noted that the Arts Council had an opening on the committee. He advised that he would contact Bluemont to see if they would like to serve on it or at least attend the meetings.

Councilmember Shea asked that, in the future when the new Town website was up and running, the Arts Council find a way to let shopkeepers know when changes occurred. She noted that she had someone come into her store looking for the Art in the Burg event. Ms. Shea advised that it would have been nice if she could have told them that it had been rescheduled.

**Council Discussion** – Maximum Contamination Level Ordinance – Wellhead Protection Advisory Committee

Councilmember Snyder opined that the ordinance was at a point where it could be adopted.

Councilmember Shea questioned whether the staff's comments and recommended changes have been reviewed by the Wellhead Protection Advisory Committee (WPAC). Councilmember Snyder advised that he did not believe the Committee had reviewed them; however, he opined that there were a lot of misconceptions, particularly on the part of the Town Attorney.

Councilmember Shea noted that this was an area where the Council had a committee with expertise. She suggested they review the comments before the Council was asked to adopt the ordinance. Councilmember Snyder reminded Council that the ordinance was requested by the Committee.

Councilmember Shea opined that, in reading the staff's comments, she may or may not have enough information to evaluate the ordinance. She reiterated that the Committee had the expertise. Ms. Shea asked that the Council hear from the WPAC as to their response to the staff's comments.

Councilmember Snyder opined that the comments did not require a technical response.

Councilmember Hazard noted that one of the Town Attorney's comments indicated that an entire section was lacking any detail. He noted another comment that expressed hope that the ordinance was not establishing authority. Mr. Hazard opined that the Council should look at a cleaned up version of the ordinance after the comments have been addressed.

The Council held some discussion regarding the WPAC's meeting schedule.

Councilmember Snyder suggested the staff clean up the ordinance based on the comments and bring it back to the Council. He opined that the ordinance did not need to be returned to the WPAC and explained that it was an ordinance to set storage and reporting requirements within the wellhead protection zone, which was defined.

Councilmember Hazard noted that he would feel more comfortable if the changes were incorporated into the document.

Councilmember Murdock noted that the Town Attorney had questions regarding the Outdoor Storage section, such as what the containment and best management plans would be.

Councilmember Snyder suggested the ordinance be cleaned up and returned to the Town Attorney. He opined that she was misreading the whole concept.

Mayor Davis opined that this was the point. She further opined that people who knew what they were talking about found it to be clear; however, those who were not well versed in this area did not understand the language. Ms. Davis suggested it needed to be clear to anyone reading it.

Councilmember Snyder suggested the draft ordinance be cleaned up by the staff and sent to the WPAC members to solicit their responses.

Councilmember Shea requested the Town Planner's input.

Town Planner Moore opined that there were certain things that were minor, such as eliminating the definitions that were not in the chapter and the reference to the map. He advised that when talking about duplicative regulations versus a zoning text amendment, those were not easy things to address. Mr. Moore opined that the Town Attorney's suggestion that the zoning ordinance and this ordinance be examined together was a good one as this was not something that could be cleaned up easily.

Mayor Davis noted the Town Attorney's comments that she understood that the ordinance was talking about properties in town; however, she noted that it did not apply to someone who dumped contaminants into the storm sewer.

Councilmember Snyder explained that he was looking for suggestions for getting the ordinance approved. He questioned whether the Town Planner had a specific recommendation for a course of action.

Town Planner Moore noted that he was asked to look at this from a zoning standpoint. He advised that it had very little impacts from a zoning perspective except for the potential conflict with a zoning text amendment. Mr. Moore noted that his other comments were not from the realm of zoning. He advised that he was not prepared to make a recommendation as this was not his area of expertise.

Councilmember Snyder advised Council that wellhead protection was not an overlay zone but rather was a circumference around the wells. He noted that the circumference was based upon a standard in Virginia. Mr. Snyder opined that a zoning text amendment was not needed for this ordinance and noted that this recommendation was included in the Wellhead Protection Plan, which the Council adopted.

Town Clerk North reminded Council that when they first discussed this ordinance, they asked that it be advertised for public hearing. She noted that it had already been advertised for a public hearing in June. Ms. North advised that they also asked for staff comments to be discussed during a work session in May. She noted that the public hearing could be cancelled if the Council desired.

Councilmember Shea questioned what it would take to get the ordinance looked at from the standpoint of what may be in conflict. Councilmember Snyder opined that there were no conflicts.

Town Clerk North advised Council that the proposed zoning text amendment prohibited the bulk storage of chemicals. She advised that this ordinance said that if chemicals were stored, they needed to be stored properly and that if a large quantity was spilled that it needed to be reported to the Town so it would have knowledge that these contaminants could affect the Town's water supply. Ms. North explained that as to the Town Attorney's comments that a section was lacking detail, the section only stated that if someone reported a spill that he/she still had to comply with local, state or federal regulations with regard to reporting and clean-up. She advised that in addition, the individual had to notify the Town of their clean-up plan so the Town would know what was happening that could affect its management of the Town's water system.

Councilmember Snyder opined that the Council was making this too difficult.

Town Administrator Semmes opined that the ordinance was not enforceable. She suggested the need to find a way to address the Town Attorney's concerns.

After some discussion, the Council agreed to cancel the public hearing, to have the staff clean-up the document based upon the staff's comments and to then refer it to the WPAC for their review during their next meeting, as they were the individuals with the expertise in this matter. They asked that the Town Attorney be present.

### **Council Discussion** – Zoning Text Amendment 15-03

Town Planner Moore reminded Council that this was the zoning text amendment that has been before them for a couple of work sessions for discussion. He further reminded them that it was a multifaceted amendment that primarily pertained to yards with regard to setback regulations. Mr. Moore noted that it also pertained to encroachments of accessory structures and fences. He reminded Council that they had a recommendation from the Planning Commission and that while there was consensus between the staff and Planning Commission on most points, there was one outstanding item with regard to fence heights on corner lots where a side yard was adjacent to the street where they differed. Mr. Moore explained that the Planning Commission's recommendation was to allow for up to a six foot fence on the front or side frontage, but not both. He further explained that the staff's starting point with the Commission was that fences on a yard adjacent to a street should be treated the same as if they were in a front yard, which would allow for a four foot fence. Mr. Moore advised that he also presented the Commission with another option, which would allow for a six foot fence on one frontage only as long as it was of an open character that would allow for the circulation of air and light. He reminded Council that the Planning Commission's recommendation was to allow for a six foot fence; however, it did not have to have an open character. Mr. Moore opined that there were mixed feelings on the part of the Council as to which option to select. He further noted that normally the staff and Commission were on the same page; however, they were not in this case. Mr. Moore advised that this matter was discussed with the members of the Planning Commission during their last meeting and they were invited to attend this work session. He noted that Councilmember Hazard and Commissioner Roszel were present, as was Commissioner Littleton, although he was not present for the last Planning Commission meeting when this item was discussed.

Councilmember Hazard suggested that the photographs in the agenda packet demonstrated the crux of the discussion and opined that this was a zoning issue that dealt with livability in the town. He advised that the Planning Commission tried to make their recommendation as nice as possible without putting undue restraint on the property owners.

Councilmember Murdock questioned why the Planning Commission was not in favor of requiring a fence that was of an open character. Councilmember Hazard opined that property owners wanted a six foot fence for privacy. He noted the definitions of side and front yards and advised that this was why the Commission recommended a difference. Mr. Hazard further noted that the way the houses were situated, what the Town called the "front" yard may actually be a resident's back yard. He advised that the Planning Commission felt that people wanted privacy.

Councilmember Murdock noted that under the Planning Commission's recommendation, one side of the solid fence would be four feet and the other would be six.

Town Planner Moore confirmed this was the Commission's recommendation. He advised that the staff initially proposed a four foot fence on both sides. Mr. Moore further advised that in response to a concern that a dog could easily jump a four foot fence, he proposed an alternative of a six foot fence of an open character as an acceptable alternative.



Councilmember Snyder noted that he liked the option of a fence with an open character. He opined that when walking or driving beside such a fence, it would not feel like it was a huge wall. Mr. Snyder questioned why motorists would slow down if they felt it was closed off.

Councilmember Shea noted the safety aspect. She opined that a solid six foot fence could limit the safety of a pedestrian and it did not allow light through the fence. Ms. Shea noted that if the Police Department had to pursue a suspect, a six foot fence would make a great hiding place. She reminded Council that under the proposal, the property would only be secure on one side as the fence on the other side would be four feet.

Councilmember Snyder opined that a solid fence made vehicular turn movements problematic.

Councilmember Murdock noted that she had a five foot fence on Stonewall Avenue; however, it was set back enough so it did not affect traffic. She advised that it still afforded her privacy.

Councilmember Hazard noted that the Planning Commission discussed the placement of the fence and agreed it could make a big difference. He suggested that moving a fence back four or five feet could change everything; however, he questioned how this could be incorporated into an ordinance.

Councilmember Snyder noted that it would be difficult to move the fence back four or five feet as a property owner would in essence be giving up part of his/her yard, as people assumed the property line ended at the fence. Councilmember Shea disagreed and noted the Kathy Ribaudo's fence was set back; however, she did not assume her lawn was not her property.

Councilmember Murdock questioned the placement of the fence. Town Planner Moore confirmed that placement could be addressed. He suggested that if the Council wanted to limit the height to four feet, the property owner could still have a six foot privacy fence along the frontage; however, they could have to pull it back to the plane of the building. Mr. Moore further suggested a property owner could still have the ability to have a private area; however, the taller fence could not extend to the right-of-way line.

Councilmember Murdock noted that, under those regulations, she could construct a solid fence on Blue Ridge Avenue as there would be no line of sight problem. She questioned how this could be regulated.

Councilmember Hazard opined that this would have to be done on an individual basis and suggested the Town could not write an ordinance to look at lots on an individual basis.

Town Planner Moore noted that there was an existing regulation that allowed the Council to consider a fence that would not otherwise meet the regulations under a special use permit.

Councilmember Shea noted that property owners would know in advance that they could not have a six foot fence when they purchased a corner lot. She advised that if there was not currently a fence, the property owner would have to abide by the new regulations. Ms. Shea noted that existing fences that did not conform to the regulations would not have to be removed.

Town Planner Moore confirmed this was the case as long as the fence was legally constructed. He noted that he was currently addressing a fence that was under construction that was too high and was requiring the owner to apply for a permit. Mr. Moore advised that they were able to change the fence to avoid the height issue.

Mayor Davis noted that under the regulations being discussed, there would be no privacy for the homeowner.

Councilmember Snyder suggested they be allowed to build a taller fence on the side of the yard that adjoined a street; however, it be open. He noted that if this was a problem, the property owner could apply for a special use permit. Mr. Snyder opined that this was a reasonable approach.

Chief Panebianco questioned whether there were provisions in the Town Code related to line of sight. He advised that this was an important public safety aspect. Chief Panebianco questioned whether a property owner could construct a six foot fence on a corner that motorists could not see around.

Town Planner Moore advised that even if the ordinance was adopted as recommended by the Planning Commission, it must be pulled back from the right-of-way. He reminded Council that the public hearing on this item was scheduled for their June 9<sup>th</sup> meeting. Mr. Moore suggested that if the Council was reaching a consensus, he could draft the final version of the ordinance.

Councilmember Snyder suggested that a four foot fence be allowed, with a six foot fence being allowed if it was of an open character. He further suggested that if the property owner needed something more, he/she could apply for a special use permit.

Town Planner Moore noted that this would be a compromise.

Councilmember Hazard noted that the Planning Commission struggled with this; however, the majority felt the Town should allow for a six foot fence in certain cases for privacy.

Councilmember Shea noted that this would not be “in certain cases” if it became the law. Councilmember Snyder noted that everyone would be allowed to have a six foot solid fence.

Mayor Davis questioned whether Councilmember Hazard was referring to the fact that it would have to conform to the line of sight. Councilmember Hazard noted that there was no final writing of this as the Planning Commission wanted to get the Council’s feedback.

Councilmember Shea agreed with Councilmember Snyder. She noted that one of the important characteristics of Middleburg was that it had an open feeling. Ms. Shea expressed an appreciation that there were not tall fences around every yard and advised that she did not want the Council to allow for solid six foot fences. She advised that as to privacy, this could be accomplished in many different ways that did not require the construction of a solid six foot fence.

Councilmember Murdock agreed it could be accomplished with landscaping. Mayor Davis questioned whether this was the same thing. Councilmember Snyder noted that this would not be a harsh divider and opined that bushes created a soft screen.

Town Planner Moore noted that a common expression was that evergreens, after time, would create the same effect as a tall fence; however, he advised that they would not. He explained that it came down to feel and advised that a living plant, while it offered privacy, was not harsh.

Dev Roszel, a member of the Planning Commission, noted that they talked about a lot of things, including boxwood fences, which could create a solid fence that would affect the line of sight. He opined that if not properly trimmed, it would be like having a six foot fence. He advised that he personally believed that if a property owner wanted a privacy fence, he/she should be able to

have one. Mr. Roszel agreed, however, that line of sight issues needed to be addressed. He noted that the Commission discussed moving a fence back to the plane of the house, which would address the issue. Mr. Roszel reminded Council that there were houses in town that had recreational areas that were adjacent to a street and opined that they should be allowed to have up to a six foot fence. He advised that the Commission did not discuss a middle ground. Mr. Roszel opined that this was a difficult decision. He further opined that a property owner should be able to create a private environment around their property as long as it did not affect how the Police Department worked or someone who was adjacent to it. Mr. Roszel suggested he should be able to construct something that protected his privacy. He further suggested that if his property was located between two houses, he should be able to construct a fence that prohibited interference from another person. Mr. Roszel opined that a four foot fence would not work.

Bridge Littleton, a member of the Commission, opined that what everyone struggled with was that this was a person's property and house. He agreed with the desire to maintain the character of the town; however, he noted that a person's home was their castle. Mr. Littleton suggested that if people wanted to allow their kids to play in the yard without having other people looking at them that they should be able to have that. He opined that if the fences had to have an open character, the Town would see chain link fences, which he did not want. Mr. Littleton suggested the need to think broader than what everyone believed would be appealing and advised that they must consider all of the types of open fences. He noted that bushes could grow to eight feet or higher. Mr. Littleton advised that there has been a lot of discussion around avoiding the "tunnel vision" and opined that if the Council was trying to avoid that, the issue was not about fences but rather was about how high to allow anything on the street.

Councilmember Hazard agreed with the concept as suggested by Councilmember Snyder; however, he suggested the language needed to be written in a way that made it easy to understand the special exception. He explained that he wanted it to be clear in the ordinance that it was easy for a property owner to apply for a special permit if they wanted a solid six foot fence.

Commissioner Littleton suggested Councilmember Hazard was saying a property owner could get a special use permit unless the fence created an issue for public safety. Councilmember Snyder noted that this was taken into consideration when a special use permit application was submitted to the Town.

Councilmember Hazard reiterated his request that the ordinance be clearly written to state that a property owner could petition for a special use permit. Town Planner Moore confirmed it was already clearly written.

Councilmember Shea questioned whether the ordinance was the proper place for that language. She noted that a permit was needed for any fence. Ms. Shea suggested the ordinance may not be the place for language that a citizen understood and noted that it was the place for the legal language. She suggested the permit should explain the process in language a citizen would understand. Councilmember Snyder agreed.

Councilmember Murdock questioned what Councilmember Hazard meant when he said "the fence may actually be in the front yard". Town Planner Moore explained that just because a house was oriented one way on a corner lot, this did not mean that by definition this was the front yard. He advised that as currently written, a four foot fence could be constructed in the front yard and a six foot one in the side yard even if the side yard was adjacent to a street. Mr. Moore explained that the Town was currently stuck with this based upon the definitions. He advised that what he was suggesting was that no matter how the ordinance was modified, if the Council wished to allow for a six foot fence regardless of character that the property owner only be allowed to have it on one frontage or the other, but not both.

Councilmember Murdock questioned whether the six foot fence would have to be solid or open.

Town Administrator Semmes requested clarification. She noted that there could be a solid six foot fence along the rear yard. Ms. Semmes suggested that a solid six foot fence could be allowed if set back in line with the building and advised that it may not be that the property owner could not create privacy in an area. She suggested he may not be able to create it all the way to the street.

Councilmember Littleton opined that what the fence would look like was important. He further opined that a six foot fence that looked “horrible” would make the entire area look horrible.

Town Planner Moore advised Council that if the property owner argued under a special use permit for a privacy fence along the right-of-way, they could consider the specifics of the request. He noted that the benefit of a special use permit system was that the Council would look at each request on a case-by-case basis and that the applicant would have to address any potential negative impacts.

Councilmember Snyder opined that the staff had gotten the Council to a reasonable compromise. He advised that he would like to advertise this matter for public hearing. Councilmember Shea agreed.

Town Planner Moore reiterated that this item had already been advertised for public hearing during their June meeting based on the Council’s last discussion. He questioned whether the Council wanted him to offer a final ordinance that contained this language or whether they wanted him to provide an ordinance with options.

Councilmembers Snyder and Shea advocated for language that would allow for a four foot fence that could be increased to six feet if of an open character, with the option to seek a special use permit for a solid six foot fence.

Councilmember Shea questioned what would happen if a property owner wanted an eight foot fence. Town Planner Moore advised that as currently written, if a property owner wanted something that did not conform to the ordinance, they could apply for a special use permit. He noted that this section did not just apply to fences but rather applied to anything in side yards.

Councilmember Hazard suggested the special use permit language be left as is, with the applications being dealt with on a case-by-case basis. Town Planner Moore noted that no changes have been proposed to that language.

The Council agreed the ordinance should be drafted as discussed.

### **Council Discussion** – Short-term Rentals

Town Planner Moore reminded Council that some of these uses have popped up that he has had to address as they were not currently allowed. He further reminded them that the General Assembly adopted legislation related to short-term rentals; however, it must be reenacted. Mr. Moore advised that a working group has convened and would make a recommendation to the General Assembly to address concerns about the legislation. He noted that in the meantime, knowing the Town had a use that people were interested in, including the Salamander Development that was hoping to utilize short-term rentals of fewer than thirty days in their development, he recommended the Town pursue its own legislation until the General Assembly took that power away. Mr. Moore opined that it was important for the Town to exercise its local

zoning authority. He reminded Council that they directed him to develop an initial proposal so they could determine whether they had a comfort level with it as a starting point. Mr. Moore noted that it still needed to be tweaked. He advised that the definition and terminology as proposed were based upon what the General Assembly proposed. Mr. Moore noted that he did omit a few words from the definition; however, he opined that it was a good one. He advised that the most important thing in the ordinance was that the primary use of the dwelling must remain residential, with the short-term rental being a secondary use.

Councilmember Hazard questioned what this meant. Town Planner Moore noted that he did not have a proposal for that at this time and wanted to confer with the Town Attorney. He opined that the occupancy may have to be six months or more by the primary resident.

Councilmember Shea opined that the proposed ordinance would not preclude other types of rentals. Town Planner Moore confirmed it would not.

Town Planner Moore advised Council that the second step would be to identify where the uses would be allowed and under what circumstance. He questioned whether it would be by-right or under a special use permit. Mr. Moore suggested the ordinance allow short-term rentals for consideration in the R-1, R-2 and R-3 Districts, with a special use permit being required in all cases. He noted that this was such a different use of property that it was important for the Council to consider each request on a case-by case basis. Mr. Moore advised that he has also recommended some basic minimum performance standards that the applicant would have to meet as a starting point and noted that doing so would not guarantee the permit would be approved. He noted that, as proposed, the use would only be allowed in single-family detached dwellings. Mr. Moore recommended there be minimum lot size and separation requirements between any adjacent dwellings. He suggested the use could be disruptive to the neighborhood; therefore, the Town would want it to be more isolated. Mr. Moore noted that there was an asterisk behind many of the minimum performance standards because while he put some thought into them, they required more deliberation. He suggested that if his proposal was a good starting point, he could get into the specifics with the Planning Commission. Mr. Moore noted that some of the proposed points came from the General Assembly legislation, such as requiring liability insurance in the amount of \$500,000. He advised that he would like for it to be \$1 million; however, if the State legislation passed, it would only be allowed to be \$500,000. Mr. Moore noted that he borrowed some of the language from other localities, some of which were in Virginia and others of which were from throughout the nation. He advised that he looked at what the others considered in terms of safety. Mr. Moore recommended the property be open for inspection to ensure it was being used as it was supposed to be. He further recommended that they have a management plan, including a local twenty-four hour contact in the event something arose. Mr. Moore questioned whether the Council believed that what was proposed was a good starting point.

Councilmember Snyder opined that this was a reasonable starting point. He noted that he expected the Planning Commission would go over it and discuss each item in detail.

Councilmember Murdock questioned how the Council went from not wanting to allow short-term rentals to wanting them. She opined that the Council did not want them.

Town Planner Moore advised that he did not hear that as the general consensus of Council. He advised that saying “the Town did not want them” was not an acceptable way to address legislation. Mr. Moore reported that many years ago, a locality said “it did not want” something and there was a lawsuit that resulted in localities having to allow for uses. Mr. Moore noted that this did not mean the Town could not require the property owner to meet stringent standards or require a special use permit that would require each application to be reviewed on a case-by-case basis. He opined that the Town could not simply say “this was not allowed”.

Councilmember Snyder opined that the consensus was that the Council was not pleased with the earlier examples of this use. Councilmember Littleton noted that this was for the protection of the citizens.

Councilmember Murdock questioned how this would affect the Salamander development. Town Planner Moore advised that his understanding, based upon his discussions with Salamander, was that their pro-forma for development included short-term rentals as an option that they would offer to the property owners. He further advised that it was his understanding that the resort would offer to be the management entity. Mr. Moore opined that there were some things in the proposed language that would probably fit in line with Salamander's plan. He advised that they understood that a special use permit would be required and noted that they wanted this to be an option.

Councilmember Hazard suggested that in light of what was said, the Planning Commission may want to look at the first section that defined the use. He noted that it talked about having a responsible management company and suggested this language be reviewed. Town Planner Moore noted that this language could easily be tweaked. He further noted that it would be the owner's responsibility to ensure there was a responsible management company.

Councilmember Murdock questioned what defined the term "residential". She further questioned whether this use could occur within any house in Middleburg. Town Planner Moore confirmed it could only occur in a house within the three proposed districts and only upon the issuance of a special use permit. He advised that he had an idea of how to define the property as being "residential"; however, he wanted to confer with the Town Attorney. Mr. Moore opined that it must be an occupied property; however, the question was the duration of that occupancy. He suggested it would likely be a minimum of six months per year.

Councilmember Snyder noted that the districts listed were already residential districts.

Town Planner Moore reminded Council that short-term rentals applied to rentals of fewer than thirty days. He advised that if the owner rented a property for a year but then kicked out the tenant after a couple of months, this would not apply. Mr. Moore expressed an understanding that there would be turnover of long-term rentals. He reiterated the need to talk with the Town Attorney as to how to define "residential occupancy".

Mayor Davis noted that Airbnb was a platform for short-term rentals. She further noted that there was nothing to prevent someone from renting a house on a long-term basis.

Town Planner Moore encouraged the Council to stop referencing a particular platform and noted that Airbnb did not just offer short-term rentals. He confirmed that rentals of more than thirty days were considered rentals and there was no prohibition against them.

Councilmember Hazard noted that the Town was not looking at this for just one or two platforms but rather was looking at it for all of them.

Councilmember Snyder noted the need to continue to keep the residential districts so they would be recognized as residential districts, which would include month-to-month rentals.

The Council agreed the proposal was a great start.

Councilmember Shea questioned whether a business license would be required for anyone offering short-term rentals on a regular basis. Town Planner Moore confirmed it would.

## **Town Council Reports**

Chief Panebianco advised Council that he has been on the street every day dealing with the Route 50 construction project. He noted that he was trying to squeeze out as much parking as possible each day, even if it was only temporary. Chief Panebianco noted that there was an area of town where there was currently no parking due to the project, which consisted of approximately one and a half out of three blocks. He reminded Council that the contractor was currently working at the intersection with Pendleton Street; therefore, all of this parking was closed as it was set up for a single lane of traffic. Chief Panebianco advised that they could not let vehicles park as they could be going against traffic.

Chief Panebianco suggested that a police officer, even if it was not a Middleburg police officer, be stationed in this area on the weekends only, for six hours per day, to direct motorists to park on the Safeway side of the street. He opined that this would create five or six parking spaces that the officer would be assigned to manage. Chief Panebianco explained that the police officer would get people out of the space according to the traffic light. He suggested that, once past the construction area, it may even be possible to bump out the barrels to create up to seven more spaces, one of which would be handicapped. Chief Panebianco noted that he would have to reach out to other communities to secure officers and stressed that they would only do traffic work.

Councilmember Murdock noted that the Chief has been on the street almost nonstop trying to figure out how to move things around and was planning to come in this weekend to reconfigure the spaces that were left. She suggested the need to show that Middleburg was going beyond the call.

Chief Panebianco opined that his proposal would not be expensive and suggested it would cost a maximum of \$1,800 for this section of construction. He advised that he would like to have a check waiting for the officer on duty, even if it was a Middleburg officer. Chief Panebianco noted that this would mean he would exceed his budget in this category. He suggested the officers be paid \$25/hour, including Middleburg's officers. Chief Panebianco further suggested Middleburg's officers not be paid overtime, but only be paid \$25/hour for this assignment.

Councilmember Littleton inquired as to the cost for the entire project. Chief Panebianco opined that it would be \$1,800.

Town Administrator Semmes reminded Council of the need to obtain VDOT's approval as this would mean moving their safety control equipment.

Chief Panebianco suggested trying his proposal on the six spaces in front of the Safeway first, which would not require the movement of anything. He further suggested that if it went well that it be expanded to the other side of the street.

Councilmember Littleton opined that even if it only created three parking spaces, it would show people that the Town was trying to help. Councilmember Snyder agreed. He noted that this would not just be for the public and reminded Council that the businesses were struggling.

Mayor Davis suggested the officer also manage the area around Pendleton Street.

Chief Panebianco advised that he did not want to take on something that was not doable and have a vehicle accident. He suggested he try his proposal in this central area to see if it worked on one side of the road and, if it did, the Town could then talk to VDOT to see if they could make the middle of the road the travel lane so the Town could gain its parking back.

Mayor Davis suggested the entire area be covered even if this meant hiring two police officers. She noted that the other end of the street experienced no parking for two and a half months. Ms. Davis further noted that only six or seven spaces were now open, with the remainder still being closed. She agreed with Chief Panebianco's proposal. She noted, however, that the businesses still had hardly any parking.

Chief Panebianco expressed a desire to get as many officers here as possible and opined that they would need no more than two per shift. He advised that this would increase the cost to \$3,600. Chief Panebianco suggested he try this to see what happened and, if it worked, expand it up or across the street. He noted that as the project progressed, motorists would be able to park. Chief Panebianco reiterated that the cost would be small; however, he wanted the Council's blessing as he may go over budget.

Mayor Davis suggested the Chief think about utilizing two officers, with each doing a section. She noted that even after the contractor moved out of an area, they may still take away the parking. Ms. Davis reiterated her suggestion that he double the number of officers, with each taking a section.

Chief Panebianco noted that he did not know how many officers he could get for the weekend. He advised that he would try to find some starting this weekend since it was Memorial Day weekend.

Councilmember Snyder opined that this was a great idea. He suggested the Chief coordinate this with the Town Administrator.

Chief Panebianco noted that VDOT would be the biggest issue. He further noted that they were currently allowing trucks to park to unload, with the contractor's flagmen assisting them. Chief Panebianco opined that the police officers were more qualified to waive out motorists.

Councilmember Snyder noted that he was confident the Town could handle the job. He asked that the staff go through the proper process of talking to VDOT.

Chief Panebianco noted that the police officers may not be part of the Middleburg staff. He advised that the officers would work under his direction as they did during Christmas in Middleburg.

Councilmember Shea advised that she had no objection to bringing other officers in; however, she would like for a local officer to be present with them.

Chief Panebianco advised that he could not guarantee a Middleburg officer would be available every week. He noted that he could have the duty officer check on these officers.

Councilmember Shea advised that once they have been here that was one thing; however, to start alone was another.

Chief Panebianco advised that he would be present the first weekend. He further advised that if Lieutenant Prince assisted, he would like to pay him, even though he was salaried, as he would be giving up a weekend.

Councilmember Shea suggested the need to address the personnel aspect to make sure the Town did not cross any regulations.



Town Clerk North reminded Council that under the Fair Labor Standards Act, if someone who was exempt worked in a position that was not exempt, such as performing police duties, that individual received overtime payment for any hours worked in the non-exempt capacity that took him over his regular work hours.

Councilmember Murdock asked that the loading zone in front of the Safeway be returned to being a regular metered space. Town Administrator Semmes noted that this was already in the process. She advised that the only person who parked there was the vendor who sold oranges.

Councilmember Murdock opined that the police officers were being extra sensitive in not giving too many tickets. Chief Panebianco reported that they were issuing a lot of violations related to safety. He further reported that they wrote eighty-one tickets last month. Chief Panebianco advised that they were being as gentle as possible when dealing with someone who was confused about the parking and were trying to educate the motorists. He noted that while they were not catching people doing 55 mph on the back streets, they were catching some motorists who were speeding. Chief Panebianco advised that mostly, they were catching sign violations.

Councilmember Snyder noted that the residents in the Ridgeview Subdivision were terrified now that the roads were being used as a cut through. He reported that he witnessed three fire vehicles driving fast through the area. Mr. Snyder opined that their actions were not worthy of a ticket; however, he noted that these were large vehicles. He suggested they should know they needed to slow down in the residential areas when they were not responding to an emergency; however, he asked the Chief to give them a reminder.

Chief Panebianco confirmed he would. He opined that even when a vehicle was only traveling 25 mph, it looked fast and 30 mph looked really fast.

Councilmember Shea noted that another safety issue was trash cans that were being left on the pavement by the trash collector. She asked that the Facilities & Maintenance Supervisor address this with the vendor.

Chief Panebianco advised Council that he would work on implementing his recommendations. He noted that it may not occur this weekend.

Councilmember Murdock noted the need for caution during the week of the Upperville Horse Show. Chief Panebianco reported that VDOT was scheduled to conduct a horse trailer test on June 1 or 2.

Councilmember Shea reported that Go Green met twice this month, including once to do a transition since the co-chairs were leaving. She advised that they wanted to change their name so it would include a reference to the ecology and fitness parts. Ms. Shea opined that a proposal would be presented to the Council in June.

### **Discussion**

Councilmember Murdock suggested the need to improve flag etiquette in the Town Office. Town Administrator Semmes reported that when she received a flag order, she forwarded it to the Police Department and the Facilities & Maintenance Supervisor and asked them to follow the order. She noted that the order for Memorial Day stated that the flags were to go down at sunrise and up at noon. Ms. Semmes advised that she forwarded it to the Police Department with a request to execute it.

Mayor Davis suggested the Town Administrator ask them to confirm receipt when they received an order.

Councilmember Murdock reported that Reggie Cooper, of the Salamander Resort, offered to host a lunch for the current, outgoing and incoming members of Council. She advised that she wanted to make sure there was no conflict.

Town Clerk North advised Council that she would check the Virginia Conflicts of Interest Act to see what would be required.

Councilmember Snyder suggested the invitation be limited in terms of what was provided so there would be no violation of the ethics laws.

Councilmember Shea reported that Go Green has asked that the Salamander Resort work with them and they have agreed to do so and to coordinate their healthy events with Go Green.

Councilmember Snyder questioned how the staff was doing in disposing of the Confederate Flag. He asked that they put together a plan that they could report to the Council. Mr. Snyder noted that he would like to find an appropriate home for it.

Town Administrator Semmes noted that she and the Mayor talked about the fact that the Town could not put the large flags on the light poles this year due to the construction project. She reported that she purchased some small flags that would be placed around town, including by the National Sporting Library and the Town entrance signs.

Councilmember Shea submitted her resignation from the Town Council for the remainder of her term.

**Council Appointment** – Town Council (Interim)

*Councilmember Murdock moved, seconded by Councilmember Hazard, that Council appoint Kathyjo Shea to the Middleburg Town Council to fill the unexpired term of Erik Scheps on an interim basis until a member can be elected during the special election to be held November 8, 2016.*

Vote: Yes – Councilmembers Hazard, Littleton and Murdock

No – N/A

Abstain: Councilmember Snyder

Absent: Vice Mayor Kirk

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

-----  
There being no further business, Mayor Davis declared the meeting adjourned at 7:57 p.m.

APPROVED:

\_\_\_\_\_  
Betsy A. Davis, Mayor

ATTEST:

\_\_\_\_\_  
Rhonda S. North, MMC, Town Clerk