



MIDDLEBURG TOWN COUNCIL
Monthly Work Session
Thursday, February 26, 2009
Town Office, 10 W. Marshall Street



6:00 p.m.

REGULAR WORK SESSION
PENDING APPROVAL

PRESENT:

Mayor Betsy A. Davis
Vice Mayor Darlene Kirk
Councilmember Trowbridge Littleton
Councilmember Catherine "Bundles" Murdock
Councilmember Lisa Patterson
Councilmember Judith Pryor Plescow
Councilmember Kathy Jo Shea
Councilmember Mark Snyder

STAFF:

Jerry M. Schiro, Town Administrator
Rhonda S. North, MMC, Town Clerk
Elizabeth D. Whiting, Town Attorney
Debbie J. Wheeler, Town Treasurer
Cindy C. Pearson, Economic Development Coordinator
Steve Webber, Chief of Police
David M. Beniamino, AICP, Town Planner
N. Phil DeLeon, Town Engineer

The Town Council of the Town of Middleburg, Virginia held their regular work session on Thursday, February 26, 2009 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 6:00 p.m.

Tim Clites thanked Council for appearing before the Loudoun County Board of Supervisors regarding the County's proposed FY '10 budget. Councilmember Murdock asked how the public hearing went after the Council left; and, noted that they left due to limited seating. Mr. Clites noted that he only stayed until 8:00 p.m. He advised that there were four large topics that were generally addressed by the speakers, with the largest being schools, followed by libraries, and the County horticultural program. Mayor Davis thanked Mr. Clites and his sons for their participation. She noted that the children had a lot to do with content of their father's speech.

Closed Session – Appointment to HDRC

Councilmember Patterson excused herself from the closed session due to a conflict of interest; and, explained that one of the candidates was her landlord.

Councilmember Littleton moved, seconded by Councilmember Shea, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(1) pertaining to the discussion, consideration or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of the public body. Councilmember Littleton further moved, seconded by Councilmember Shea, that this discussion be limited to an appointment to the Historic District Review Committee. Councilmember Littleton further moved, seconded by Councilmember Shea, that the Council thereafter reconvene in open session for action as appropriate.

Vote: Yes – Councilmembers Kirk, Littleton, Murdock, Plescow, Shea and Snyder
No – N/A
Abstain: Councilmembers Patterson
Absent: N/A
(Mayor Davis did not vote as there was no tie to require her vote)

Councilmember Littleton participated in the interviews of the first two candidates; however, he excused himself from the interview of the last one, as well as the discussion related to all of the candidates.

Mayor Davis asked the Council to 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. Each member of Council who attended the closed session did so.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council move to appoint Margaret Littleton as a replacement member of the Historic District Review Committee.

Councilmember Snyder strongly urged the other two candidates to keep their applications on file for future consideration.

Vote: Yes – Councilmembers Kirk, Murdock, Plescow, Shea and Snyder
No – N/A
Abstain: Councilmembers Littleton and Patterson
Absent: N/A
(Mayor Davis did not vote as there was no tie to require her vote)

Mayor Davis asked the Town Clerk to send letters of appreciation to the remaining candidates.

Public Presentation – Salamander Project – Prem Devadas

Prem Devadas announced that Salamander has decided to push back the opening of the resort to the spring of 2011; and, explained that the travel industry was experiencing an unprecedented drop in occupancy. He stressed that the delay was caused by economic conditions. Mr. Devadas advised Council that this was the first time he has experienced a decrease in the luxury sector. He reminded Council that the plan was that the resort would do at least sixty percent of its first year business through corporate and association groups; and, noted that these groups were leading the drop in occupancy in part due to economic conditions, but also due to the negative media exposure of companies that were going to lavish places and spending large sums of money. Mr. Devadas advised that, unfortunately, companies were being sensitive to this exposure; and, were cancelling meetings and paying the penalties due to perceptions. He explained that the other reason for the delay that was significant for them was that because of the drop in demand, five star resorts were now offering low rates. Mr. Devadas reminded Council that the Salamander Resort was always modeled among the top tier in the country, charging a certain rate. He noted that while this environment was good for the consumer, it was bad for businesses. Mr. Devadas explained that after studying the market closely, it was decided that an opening in the spring of 2010 would be disastrous to the efforts to have a successful opening. He noted that industry experts were projecting an economic downturn through 2010; and, advised that even if this is correct, the luxury travel industry trails the economy by six to nine months. Mr. Devadas advised that they have chosen 2011 as their new opening date because they are hopeful things will turn around by then. He reiterated that to open in 2010 under these economic conditions would threaten the quality of the resort that they have all talked about as being important. Mr. Devadas explained that they could not open with low occupancies and operate at a five star level; and, noted that existing five star resorts were cutting back. He suggested a business could get away with that when they were well established, but not for long. Mr. Devadas advised Council that during a recent LCVA Board meeting, one of the florists described her concern about business for the coming year. She noted that one of her luxury clients promised they would never cut flowers; however, in January did so in lieu of silk arrangements. He reiterated that they could do so because they were established; however, a

new property could not. Mr. Devadas noted that Salamander Resort was in a unique situation because of Sheila Johnson's ownership; and, advised that the property carried no debt and there were no partners. He noted that he recently spoke with a colleague who was involved in opening of a four star resort next to the Los Angeles Airport within the next three months; and, advised that they will have to open, as a three star resort, because of their financing. Mr. Devadas explained that they will try to get through the first few months and hope the economy gets better. He reiterated that Salamander was not in that situation. Mr. Devadas noted that it was not an easy decision and would cost money to delay the project. He stressed that they were not stopping the project – they were only slowing it down; and, explained that they would re-sequence the construction to the best of their abilities. Mr. Devadas advised that it was critical that they close the building to protect their asset; and, explained that throughout the spring, construction would continue as normal on items such as the stone, stucco, slate roof, doors, windows and mechanicals needed to support it. He further advised that other things, such as the landscaping, furniture, fixtures, millwork and interior stone would be pushed back. Mr. Devadas noted that they do not want to carry more costs than necessary; they wanted to make sure things do not age over the course of the year; and, they want to protect their warranties as much as possible. He advised that the Town would continue to see work throughout the year; and, noted that the barn was under construction. Mr. Devadas explained that they would complete the exterior of the barn, but would not install the finishes until the following year. He noted that the sales office would continue to sell the resort; and, was very active in booking groups. Mr. Devadas advised that they have a substantial number of groups who were interested in booking in 2011. He noted that they have contacted their clients to inform them of the change in opening; and, so far, all have been understanding. Mr. Devadas noted that there were a lot of details yet to be determined; and, explained that he wanted to let the Council know where things stood and to answer questions. He noted the issue of the wastewater treatment plant; and, advised that Salamander would live by its agreement. Mr. Devadas confirmed they would complete the wastewater treatment plant. He noted that the plans were to re-sequence construction of the water treatment plant as it did not affect the Town.

Councilmember Snyder noted that once the Town Council was over its division, everyone said they wanted the Town and Salamander to be partners and to work together. He further noted that the Town was facing a serious budget shortfall; and, was very concerned about revenues. Mr. Snyder explained that the existing wastewater treatment plant was continuing to deteriorate; therefore, the Council was extremely sensitive to the completion date of the new plant and of Salamander's commitment to complete the plant. He noted that they were also very concerned about the increased costs to operate the plant as they expected Salamander to be a customer in order to help defray the operating costs. Mr. Snyder reminded Mr. Devadas that due to the new technology, the Town could not turn on part of the plant. He reiterated that the plant would be expensive to operate; and, the Town had a small customer base to cover the costs. Mr. Snyder asked what commitment Mr. Devadas could give the Town on that issue. Mr. Devadas advised Council that he could commit to the construction; and, based upon his discussions with the Council, would continue to construct the plant on schedule unless they decided to do something else. He noted that he understood the Town's issues with regard to cost and the predicament it was in as the result of the delay in opening. Mr. Devadas expressed his opinion that Salamander has consistently lived up to its agreement. He noted that they agreed to the installation of certain technology that cost more than the estimate; and, reminded Council that prior to doing so, they discussed the technology with the Council who said the Town wanted it. Mr. Devadas noted that the cost was substantially more than the \$400,000 estimate. He advised that Salamander came back to the Town and its consultants to explain the purchase costs, as well as the cost of operating the new technology which was substantially more than traditional technology. Mr. Devadas noted that Salamander advised the Town against the technology because of the additional operating and purchase costs; however, the Town decided it wanted the new technology. He advised that Salamander provided this technology even though it incurred greater cost than was anticipated. Mr. Devadas noted that Salamander has posted a bond for the plant's construction. He advised that even though it was slowing construction on the resort and would lose money, if the Council said it needed the new wastewater treatment plant, Salamander would proceed with its construction. Mr. Devadas stressed that he would not fight over that. He advised that by the same token, Council must accept that everyone was in a difficult place and were all potentially suffering because of this. He noted that he understood what the Council was saying; however, he suggested Salamander has lived up to its obligation in that it dutifully explained to the Council that the technology would cost more, with the Council making the decision to proceed. Mr. Devadas expressed an understanding that the existing system was in need of regular repairs to continue operating; and, advised that if the Council would consider possibly slowing the plant's construction to save Salamander the carrying costs, he would look at the costs to keep the existing plant running and was willing to explore

helping the Town. He noted that this may not be an option for the Town; however, he was willing to explore it. Mr. Devadas suggested it was not fair for Salamander to bear the costs for something they did not agree to if it was not called for in the agreement. He advised that if it was in the agreement, they would live by it.

Councilmember Snyder noted that Salamander was putting the Town in a bind by not being a consumer of a plant whose size the Town doubled to accommodate their requirements. Mr. Devadas advised that he would work with the Town to the best of his ability; and, would be glad to discuss this matter. He noted that this was the reason the Town required Salamander to post the bond; and, advised that if something should happen to the resort, the Town could complete the wastewater treatment plant. Mr. Devadas reiterated that Salamander had nothing to do with the increased cost of technology. He advised that he would be happy to meet with Council to study the matter and review the different options. Mr. Devadas expressed an understanding of the situation; and, advised that he wanted to help to the best of his ability with whatever was fair.

Councilmember Murdock noted the Council's obligation to the taxpayers; and, advised that some of the utility customers were having a hard time paying their utility bills as they existed. She advised that it concerned her to think about what would happen if the plant were finished and the resort did not open. Ms. Murdock asked whether Mr. Devadas was willing to give a commitment to opening the resort in 2011. Mr. Devadas confirmed he could not; and, noted that he could not foresee what was happening today. He noted that up until two months ago, the pace of their bookings was in line with their goals; however, after the new year, they fell off the table. Mr. Devadas suggested that every day they get worse. Councilmember Murdock asked whether it was possible that the resort would not open until 2012 or 2015. Mr. Devadas confirmed the opening would not be in 2015, 2014 or even 2013, as he could only prolong the opening so long. He explained that his goal was to open as quickly as possible. Mr. Devadas noted that he has already asked the general contractor how quickly he could speed up construction if the economy were to regain momentum; and, was told there were certain things that could be done. He advised, however, that if the economy were to continue to worsen, they would have to consider a delay. Councilmember Murdock noted that if the opening were to occur in 2011 or 2012, the water treatment plant construction would be an eyesore for the surrounding residents. She noted that the real estate business was bad enough without that eyesore; and, asked whether there was any way to landscape around it. Mr. Devadas noted that the staff has already raised this concern; and, he has already spoken with his team about what could be done from a landscaping standpoint. He reminded Council that they do not yet know whether they will stop construction on the plant.

Councilmember Littleton expressed his opinion that the staff should get together with representatives from Salamander to review all of the options. He suggested they do so as soon as possible so the Council would have something with which to work. Mr. Devadas agreed this was a great approach. Councilmember Littleton noted the need to make things work and to do so without hurting the citizens. The remainder of Council agreed. Vice Mayor Kirk suggested the Council hold special meetings if necessary. She noted the need to determine what the Council felt was most important; and, to take care of the citizens. Mr. Devadas advised Council that part of his reason for appearing before them was to make sure they had the facts. He stressed that Salamander was very happy with the contractors, in particular Turner Construction. Mr. Devadas noted that they would continue to serve as the general contractor for the project.

Councilmember Shea noted Mr. Devadas' comment regarding conditioning the resort. She asked whether this required water; and, whether this had been addressed. Mr. Devadas confirmed it did. He noted that they were looking at the options; and, advised that it may be that they cannot stop work on the new water treatment plant. Mr. Devadas confirmed that they must have water in order to operate the chillers; and, advised that they would know the status better in a couple of weeks.

Mayor Davis expressed her opinion that the Council needed to schedule some meetings for discussion purposes. Mr. Devadas agreed; and, noted that he would make himself available to come to the public meetings in the next few months in order to keep the Council updated. He presented Council with copies of their marketing brochure; and, noted that it established Middleburg as a special destination. Mr. Devadas reiterated that they used this as an opportunity to sell Middleburg. He invited members of Council to contact him if they had any questions.

Mayor Davis thanked Mr. Devadas for attending the Board of Supervisors public hearing; and, expressed hope that their presentation made a difference. Mr. Devadas expressed his opinion that the presentation was well orchestrated. He offered to continue to assist when the budget reached the School Board level.

Council Review – Report on Loudoun County Community Action Board

Councilmember Shea reported that the by-laws have not gone before the Board of Supervisors. She further reported that a conference would be held in Richmond regarding the Weatherization Program; and, advised that the Board would send someone to it. Ms. Shea noted that there was a lot of stimulus money for that program, with the LCCAB working on a needs assessment to determine what services were available and what was not covered. She advised that the LCCAB was also working on a poverty symposium, as there was an increasing number of low-income residents whose needs should be addressed. Councilmember Murdock inquired as to the details of the Weatherization Program. Councilmember Shea explained that the economic stimulus money could be used for those whose incomes were 200% above the poverty line; therefore, there were an increased number of residents who would qualify to have their homes assessed and windows repaired, etc. She noted that she would bring back more information as soon as it was available.

Council Discussion – FY '10 Budget

Town Administrator Schiro advised Council that their packet contained a snap shot of the General Fund, with projections provided for revenues and expenditures. He explained that the left side of the summary sheet identified the revenues that are received in the General Fund portion of the budget, with the right side identifying those departments that funded by the General Fund. Mr. Schiro advised that the summary showed the current budget, the projections for 2010 and the change in both dollars and percentage. He stressed that the proposed budget included no cost-of-living adjustment or salary increases for the employees; and, was simply a continuation of the current operating budget. Mr. Schiro advised that the majority of the departments' expenditures were reduced, with the exception of the Police Department whose budget reflected the entire year's cost of the new police officer that was hired mid-year.

Town Administrator Schiro noted the reduction of \$71,000 in General Fund revenues; and, advised that the budget, as proposed, contained a deficit of \$14,000. He expressed his opinion that the revenue projections were optimistic at best. Mr. Schiro reminded Council that, based upon the 2008 assessments at the \$.15 tax rate, he should have budgeted \$397,000 in real estate tax revenues for FY '09; however, he only budgeted \$375,000. He further reminded Council that during the fiscal year, they made significant changes to the Town's Tax Relief for the Elderly Program; and, noted that the staff was not sure of the affects on the Town's revenues at that time. Mr. Schiro advised that, currently, the Town has collected \$366,000 - below the FY '09 projections. He noted that he has budgeted the FY '10 real estate tax revenues at \$373,000; and, reiterated that the Town has not received that much this year even before the 7% reduction in assessed values. Mr. Schiro advised Council that the assessed value for a single-family home was down by 14%; and, reiterated that the revenue projections were optimistic. He suggested the meals and lodging tax revenues were also optimistic; and, urged caution as the Town went into the budget year as there may be some shortfalls. Mr. Schiro advised Council that page two of the budget materials identified the amount of revenue that would be realized for each penny on the real estate tax; and, advised that one penny would generate \$24,000-25,000. He explained that in order to receive the same amount of revenue as in FY '09, the Town would need to set the real estate tax rate at \$.17. Mr. Schiro noted that he has heard reluctance from some members of Council to raise the tax rate. He asked that they keep in mind that given the reduction in assessed values, a two cent increase on a single-family dwelling would result in a tax bill that was expenditure neutral. Councilmember Littleton expressed his opinion that this was not an unfair proposal. Councilmember Snyder asked that before the Council considered raising the rate, it look at contingencies. He noted the previous increase to the police force. Mr. Snyder suggested that if someone were to leave the Police Department by his own decision, the Town not fill the position.

Town Administrator Schiro asked that Council establish some budget parameters that he could then use to look at the budget further. Councilmember Snyder noted that the challenge would be to look at temporary cuts. He agreed the Council may have to look at increasing the tax rate and cuts; however, he noted that it was easier to look at raising the rates and harder to look at cuts. Councilmember Littleton agreed. He noted, however, that last year if he paid \$200 in real estate taxes and this year only paid \$180; and, if the

following year the assessments increased again bringing the tax bills back to \$200, he would question what happened. Mr. Littleton suggested it may be better to keep the bill consistent at \$200. He expressed his opinion that the Town should not reduce revenues because of the devalued property; and, should increase the tax rate. Mr. Littleton noted that the Town could always reduce the rate when the assessed values increased again. Councilmember Snyder expressed his opinion that this was an idea worth discussing. Town Administrator Schiro reminded Council that if they don't increase the tax rate to keep even with revenue and the property values fall further, the Town could be four cents behind. He noted that when he first came to Middleburg, the Town had not raised its tax rate in ten years or more; and, reminded Council that they finally increased it from ten to fifteen cents. He noted that fifteen cents now equates to the same amount of revenue that thirteen cents provided then. Mayor Davis noted that the difficult part is that business assessments did not change; and, some increased. She expressed a desire that when the re-assessments occurred that all would happen equally. Ms. Davis reminded Council that businesses were hurting. She noted that not all of them owned the buildings they were located in; however, she suggested the tax was reflected in their rents. She agreed with Councilmember Snyder; and, noted that this was a bare bones budget in which the employees were not getting raises. Ms. Davis noted, however, that no one was giving raises. Town Administrator Schiro advised Council that if they were not willing to raise taxes, he needed to know where he should look to make service cuts. Councilmember Snyder recommended the Council discuss both tax increases and cuts. Vice Mayor Kirk agreed. Mayor Davis advised Council that she was not saying she would absolutely not consider a tax increase. She agreed with the need to look at both options; and, suggested that perhaps the Council could consider a penny increase and cuts.

Town Administrator Schiro advised Council that he didn't present a utilities budget as he didn't know where to go with the Salamander news. He explained that if the new wastewater treatment plant were to come on line mid-2010 and the Town was forced to cover the operating costs with the existing customer base, there would be nowhere to get money except from those existing customers. Councilmember Snyder asked the staff to put together the budget scenarios. Town Administrator Schiro noted that he would need input from the engineers and would have to discuss the options with Salamander. He reminded Council that the existing plant was not in good condition; and, noted that the RBC unit was deteriorated. Mr. Schiro noted the need to determine what would occur if Salamander were to delay construction of the new plant. Mr. Schiro reminded Council that the current completion date was December 2009, with the water treatment plant scheduled for completion in September 2009. He suggested Councilmember Shea's observation regarding the need for water for Salamander's heating/cooling systems was an astute one; and, advised that they could not tie to the Town's existing system. Mr. Schiro noted that he was very concerned, although he understood the reasoning behind the delay in opening. He reminded Council that the Town could not cut its losses; and, explained that once the new plant was operational, the Town must pay the operating costs. Councilmember Patterson asked whether the Town could operate the new plant with its current waste levels. Town Administrator Schiro noted this was a good question; and, explained that the new membrane technology must eat. He reminded Council that the Town could not shut down half the plant. He reiterated that there were big questions related to the Utility Budget. Vice Mayor Kirk asked whether the proposed budget would include a rate increase. Town Administrator Schiro reminded Council that the plans were for another 6% increase this year. Councilmember Snyder expressed his opinion that this increase could not be avoided. Town Administrator Schiro noted that the only other option was to fund operations out of the contingency reserves, which he would not recommend.

Councilmember Patterson asked whether the staff was addressing with the County why there was no increase in Salamander's assessed values after the rezoning. Town Planner Beniamino confirmed that he contacted the County Assessor's Office. He advised that he would meet with their staff; however, it was his impression that they were not paying attention to what was happening in the Town. Mr. Beniamino noted that it was difficult to assess for half a structure; and, suggested it was easier to deal with the land use. He expressed hope that the County would be able to re-capture several years' worth of tax revenue. Mr. Beniamino advised Council that the County has Salamander's land in an agricultural use; and, was told by the Office of Economic Development that until it was subdivided, the land could stay in an agricultural zone for tax purposes, even if the resort were open. He advised that since 2002, Salamander has paid the County less than \$1,200 per year in real estate taxes. Councilmember Snyder asked how the property could end up in a taxing district that did not exist in the Town. Town Administrator Schiro advised Council that the agricultural tax district did not affect the Town's revenues – only the County's.

Town Administrator Schiro advised Council that he would bring back some budget scenarios. Councilmember Shea asked whether the BPOL revenue was down due to reduced income from businesses or whether fewer businesses were applying for a business license. Town Administrator Schiro reminded Council that business licenses were not due until March 1; and, explained that he based the projected revenues on actual collections to date. He suggested that given the current economic climate, it was not realistic to increase BPOL revenue projections. Councilmember Patterson noted that the revenues would increase due to Salamander's contractors. Town Administrator Schiro confirmed the Town would see an increase this year, as the Town Treasurer has pursued the contractors. He noted that this increase would not be repeated.

Discussion

Councilmember Patterson advised Council that she was approached by the Garden Club asking whether any consideration had been given to installing a plaque on the Town entrance signs to recognize the contributors. Economic Development Coordinator Pearson confirmed she has been discussing such a plaque with John Ralph of Quail Run Signs; and, advised that they plan to place one on the rear of the signs. She noted that the Garden Club contributed half of the cost of the signs, with the Beautification Committee, Business and Professional Association and Town contributing the remainder. Councilmember Littleton expressed his opinion that it was only fair to recognize these organizations for their contribution.

Closed Session – (1) Consultation w/ legal counsel and (2) personnel

Councilmember Shea moved, seconded by Vice Mayor Kirk, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(7) and (1) for consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel and 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 Shea further moved, seconded by Vice Mayor Kirk, that this discussion be limited to (1) the performance of contractual obligations owed to the Town and (2) a personnel matter. Councilmember Shea further moved, seconded by Vice Mayor Kirk, that the Council thereafter reconvene in open session for action as appropriate.

Vote: Yes – Councilmembers Kirk, Littleton, Murdock, Patterson, Plescow, Shea and Snyder
No – N/A
Abstain: N/A
Absent: N/A
(Mayor Davis did not vote as there was no tie to require her vote)

Mayor Davis asked the Council to 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. Each member of Council did so.

There being no further business, the Council moved to adjourn the meeting at 8:21p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk