



MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes
Thursday, April 9, 2009
6:00 PM



PENDING APPROVAL

PRESENT: 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
David M. Beniamino, Town Planner
Steven Webber, Chief of Police
N. Phil DeLeon, Town Engineer
Cindy C. Pearson, Economic Development Coordinator
Debbie J. Wheeler, Town Treasurer

ABSENT: Mayor Betsy A. Davis

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting on Thursday, April 9, 2009 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Vice Mayor Kirk called the meeting to order at 6:00 p.m. She led Council and those attending in the Pledge of Allegiance to the flag.

Public Comment

Helen Hyre presented Council with a letter from Pat Rose regarding her property; and, explained that she was concerned about the views and whether Salamander planned to do any plantings. She advised Council that the residents would like a buffer from the gate down the road so they would not have to look at the project; and, noted that now was the time for such a planting. Ms. Hyre expressed her opinion that the view was hurting the sales of homes in this area. She suggested that before Salamander was allowed to start construction, the Town should have protected the homeowners on the street. Ms. Hyre advised that she has also spoken with Mike Morency, who was selling his property. She noted that her house was also for sale; and Ms. Thomas, who no longer had a view, was concerned that she could not get what she paid for her property if she were to sell it. Ms. Hyre advised Council that the Rose letter stated that this was a Salamander problem; however, she expressed her opinion that it was more of a Council problem in that they need to protect the existing homeowners. She advised that most of the residents of Chestnut and Sycamore Streets were very upset as they were people who cared about their homes and the views. Ms. Hyre asked that Council do something; and, advised that she would like a response when she returned.

Liz Thomas, 210 Sycamore Street, advised Council that she lived directly across the street from the new water tower. She agreed with Ms. Hyre that the view was appalling. Ms. Thomas noted that there were landscaping plans associated with the project; and, advised that after reviewing

the Town's buffer ordinance, she felt it was just a superficial guide. She presented a copy of a landscape and tree ordinance from Gwinnett County, Georgia; and, noted that she did not copy the entire book. Ms. Thomas advised Council that she felt very strongly that the landscaping should not be undertaken by a local nursery, but should instead be handled by certified arborists and landscape architects. She noted that the issue was timing; and, reminded Council that trees took a long time to grow. Ms. Thomas asked how long she must look at the tower and the construction. She noted that there was a porta-john located across the street from her; and, suggested it should be moved even if the workers had to walk a little further to access it. Ms. Thomas expressed her opinion that it did not need to be in full view of the residents. She agreed with Ms. Hyre that there needed to be a response from Council and a timeline. Ms. Thomas noted that she did not know whose responsibility it was to plant a buffer; however, she suggested that Salamander should not hold off on doing so as there was a tremendous impact on the value of the homes and lives of the residents in her neighborhood.

Councilmember Murdock expressed an understanding of the residents' concerns; and, advised that when Salamander appeared before the Council to announce the delay of their project, she asked that they install the landscaping. She stressed that this issue was addressed; and, that Salamander assured the Council that the landscaping would move forward. Ms. Murdock asked that Ms. Hyre and Ms. Thomas be provided with copies of the minutes of that meeting.

Ms. Thomas advised Council that she reviewed the planting plans; and, suggested the plantings were just around the water treatment facility. Town Planner Beniamino advised Council that the Streetscape Committee, consisting of landscape architects and arborists, took a great deal of time in reviewing and approving Salamander's landscape plans. He expressed his opinion that the Town's landscape ordinance was very strong. Councilmember Murdock noted the need to follow through on this item. Town Planner Beniamino reminded Council that the land referenced by Ms. Thomas, while owned by Salamander, was not part of their project or the water treatment plant; therefore, the Town could not make them plant that property. He confirmed there was screening for the plant all along the property line to Stonewall. Town Administrator Schiro confirmed that the water treatment plant project was advancing; and, there would be no delay. He expressed an understanding of the issues; however, he advised that as long as the property was under construction, the landscaping could not be installed. Vice Mayor Kirk asked for a timeframe for construction. Town Administrator Schiro reminded Council that the plant was scheduled for completion in October. Town Planner Beniamino advised Council that the Town could ask Salamander to advance the landscaping; however, they could not demand it. Vice Mayor Kirk assured Ms. Hyre and Ms. Thomas that the Town would get back to them.

Action Items related to Public Hearings

Council Approval – Zoning Text Amendment 09-01 pertaining to temporary uses and itinerant vendors

Town Planner Beniamino reminded Council that during their public hearing, they asked for changes to the ordinance; and, advised that he has made those corrections. Councilmember Patterson advised Ms. Hyre and Ms. Thomas that once adopted, this ordinance would deal with issues such as porta-johns and their screening.

Councilmember Shea moved, seconded by Councilmember Snyder, that Council adopt an ordinance approving Zoning Text Amendment 09-01, as amended, to add Section 64 to Article 5 of the Middleburg Zoning Ordinance to regulate certain temporary uses and itinerant vendors.

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

Special Recognitions by Mayor and Council – 2008 LCVA Awards

Economic Development Coordinator Pearson reminded Council that the Loudoun Convention & Visitors Association held an awards luncheon last week, during which time Middleburg businesses/individuals won five awards. She expressed her opinion that it was wonderful to have Middleburg so well recognized. Councilmember Murdock noted that there were many dignitaries present for the ceremony. Vice Mayor Kirk advised those present that she was proud of them.

Vice Mayor Kirk recognized the award winners, including: Jason Reaves, Pastry Chef of Market Salamander, Tourism Employee of the Year Award; Vaughn Skaggs, Executive Sous Chef of Market Salamander, Management Employee Award; Mary Kay Garwood, Pink Box Docent, Tourism Volunteer of the Year; Chrysalis Vineyards 8th Annual Norton Wine & Bluegrass Festival, Event of the Year with Attendance under 3,000; and, Upperville Colt and Horse Show, Event of the Year with Attendance over 3,000. She thanked them for representing Middleburg so well.

Prem Devadas, of Salamander Hospitality, noted that Genie Ford, who was a member of the nominating committee, did a great job of encouraging the submission of nominations. Councilmember Patterson asked whether LCVA would put the videos used during the luncheon on their website; and, advised that they were worth seeing as they explained why awards were received. Councilmember Murdock noted that the video on the Journey through Hallowed Ground award was very good. Economic Development Coordinator Pearson advised Council that she would check on whether the link has been established.

Approval of Minutes

Councilmember Snyder moved, seconded by Councilmember Shea, that Council approve the March 9, 2009 Work Session; March 12, 2009 Regular Meeting; and March 26, 2009 Work Session meeting minutes as amended.

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

Staff Reports

Town Administrator Schiro reported that the contractors for the Marshall Street Water Line Project have been hitting lines, which have resulted in the water being off just about every day. He noted that the problem was a combination of old lines that were not in the right locations according to the plans and lines that were so fragile that the contractors did not even need to hit them to break them. Mr. Schiro displayed a water fitting that was removed from the system that was almost entirely closed due to debris that had accumulated over the years. He reported that the contractors have now reached the rock ledge, which would slow the project. Mr. Schiro noted that the contractor made good time on the North Madison Street portion of the project; however, the rest would now take time to get through.

Town Administrator Schiro reported that most of the federal stimulus money that was funneled through the Virginia Department of Health for water system improvements has been developed in the form of a loan program. He suggested that, given the challenges with the Town's utilities and the associated costs, he would not recommend going after the loans and incurring additional debt. Mr. Schiro noted that while the loan package was attractive, it would still be debt service that the Town would have to carry. He suggested that the Town wait a year before incurring additional debt. Councilmember Snyder agreed; and, expressed concern over the current debt service.

Town Administrator Schiro advised Council that the Town also applied for grant assistance for the wastewater treatment plant; and, noted that he received a call this week which indicated that the application was on the Department of Environmental Quality's radar. He expressed hope that it would be approved. Mr. Schiro reminded Council of the repairs to the RBC unit; and, explained that once it was removed for repair, it was determined that the filters also needed to be removed and replaced. He advised Council that the Town was out of compliance with DEQ standards for a while; therefore, it may get a warning letter as a result of this repair. Mr. Schiro confirmed that the unit was now in operation. He advised Council that it was his understanding that the water and wastewater treatment plant projects were advancing; and, advised that they were working through the SCADA control issues and hoped to have them resolved shortly. Prem Devadas, of Salamander Hospitality, confirmed they were working through the issues; and were working with the Town to do the right thing. Councilmember Murdock asked for Mr. Devadas' feelings regarding the State grant application. Mr. Devadas confirmed that he has spoken with the Governor's office; and, expressed hope that the Town should have an answer quickly. Councilmember Snyder asked whether both RBC units were back on-line. Town Administrator Schiro confirmed they were. He noted that Loudoun Water was now aerating the older unit. Vice Mayor Kirk asked whether the Town was able to review the materials for the treatment plant projects. Town Administrator Schiro confirmed it was; and, reiterated that the staff has been working through the issues. Mr. Devadas noted that he was alerted to the planting comments that were made earlier in the meeting. He asked that the Town send him a note identifying the specific request. Councilmember Murdock reminded Mr. Devadas that this was an issue she raised last month when he announced the resort's delay. Mr. Devadas reiterated his request that the Town send him a note; and, suggested this was something that could be worked out. Town Administrator Schiro confirmed that he would send Mr. Devadas a note.

Chief of Police Webber advised Council that he had nothing new to report on the recent burglary investigations. He asked for Council's permission to investigate the establishment of a reward program through the Middleburg Bank; and, advised that he has spoken with the Middleburg Business and Professional Association about such a program. Vice Mayor Kirk expressed her opinion that the Council approved this in this past. Chief Webber noted that it was discussed two years ago; however, the bank officials indicated that nothing was established. Town Attorney Whiting reminded Council that they did adopt an ordinance authorizing a reward fund; however, she suggested it may not have been funded. She reiterated that the authority existed in the Town Code to do so. Councilmember Snyder recommended that this would be an appropriate budget topic. Town Administrator Schiro noted that he would have information available during the next work session.

Councilmember Murdock asked the Chief to report on the Burglary Prevention Seminars. Chief Webber confirmed that the two sessions were well attended. He advised that a Crime Prevention Specialist from the Loudoun County Sheriff's Department did an hour long PowerPoint presentation, followed by a question and answer session. Councilmember Murdock expressed her opinion that the sessions were very good. Councilmember Littleton noted that he received good comments about them.

Councilmember Murdock noted that the Chief's written report indicated that there were ten unsecured buildings during the month of March. Chief Webber confirmed that, when checking businesses after hours, the officers found ten unsecured buildings; and, noted that this occurred after the burglaries. Councilmember Murdock noted the need to send a message to the community about the need to lock their doors. Vice Mayor Kirk asked whether this was continuing to occur. Chief Webber advised Council that he could not recall having received any such reports this week.

Economic Development Coordinator Pearson advised Council that she placed flyers on their desks related to the Jump into Spring Event and the Chrysalis Bluegrass Festival. Councilmember Murdock asked whether it was correct that Loudoun County eliminated funding for the Bluemont Concerts. Ms. Pearson confirmed this was correct; and, advised that Mr. Dunning, of Bluemont, was trying to ensure the Town received four or five concerts this year. She noted that the last concert would be held in coordination with the Sidewalk Sale so there would be a full days worth of events.

Town Planner Beniamino reported that the staff has mailed seven hundred nineteen postcards alerting property owners in Middleburg of the public input sessions scheduled for later in the month. He advised that he would provide a schedule of those members of the Council, Planning Commission and HDRC who have indicated which meetings they could attend. Mr. Beniamino expressed hope to have at least one member of Council at each session so they could report any important statements that were made. He noted that the Town Clerk would also attend in order to take minutes of the meetings so there would be a written version of the comments.

Town Treasurer Wheeler reminded Council that she included a chart in this month's financial report. Councilmember Murdock expressed appreciation for the chart. Vice Mayor Kirk asked whether the Town was on target for the year. Town Treasurer Wheeler confirmed it was. Councilmember Snyder noted that the Town was at the three-quarters mark. Town Treasurer Wheeler confirmed the Town was low on the expenditure side. Town Administrator Schiro noted that he has received no questions from Council related to the FY '10 budget. He advised that if the Council was okay with the budget, he and the Town Clerk would develop a schedule for the public hearings. Council agreed they would like to hold a work session discussion on April 23. Vice Mayor Kirk noted that she had some questions that she would e-mail to the staff.

Town Attorney Whiting reported that she attended the Local Government Attorney's Conference last week; and, suggested it was always good to compare notes with colleagues and to network.

Vice Mayor Kirk noted that the Council did not receive reports from the Town Clerk. She suggested that if Ms. North had something to report in the future that she should feel free to do so during this item.

Councilmember Murdock asked whether Councilmember Snyder was still concerned about water levels given the recent rainfalls. Councilmember Snyder confirmed he was starting to feel nervous; and, advised that he was at the point of asking for voluntary water conservation. He reminded Council that the Town should have received nine to ten inches of rain by now; however, it was woefully short of that. Mr. Snyder advised that he would continue to monitor the rainfall; and, if he became more concerned, would let the Council know. Town Planner Beniamino recommended that the staff make an announcement to this affect during the community work sessions. Councilmember Snyder advised Council that he would e-mail the staff the current details. Town Administrator Schiro noted that he was monitoring the wells; and, their levels were okay. Councilmember Murdock suggested that a voluntary conservation notice be placed on the Town's website. Councilmember Snyder reminded Council that the Town was moving into the period when people want to use water for gardening and general washing.

Action Items (non-public hearing related)

Council Approval – Arbor Day Proclamation

Vice Mayor Kirk read the proclamation aloud.

Councilmember Snyder moved, seconded by Councilmember Plescow, that Council adopt a proclamation declaring April 25, 2009 as Arbor Day in the Town of Middleburg; and, urging all citizens to celebrate Arbor Day and to support efforts to protect our trees and woodlands.

Economic Development Coordinator Pearson reminded Council that the Arbor Day activities would occur at the Community Center.

Vote: Yes – Councilmembers Kirk, Littleton, Murdock, Patterson, Plescow, Shea and Snyder

No – N/A

Abstain: N/A

Absent: Mayor Davis

Council Approval – Support for Buy Local Program

Genie Ford, owner of Books & Crannies, reminded Council that the recession has hurt the businesses in Middleburg. She expressed a desire to implement a Buy Local Campaign; and, advised that she was seeking Council’s support in both the form of moral support and involvement. Ms. Ford explained that she wanted to raise local awareness of the need to shop locally; and, suggested that the best way to do so was to use the children to get the message to their parents. She expressed hope to raise money privately for a t-shirt contest among the students at the Middleburg Elementary School. Ms. Ford advised that she would also be asking for a proclamation from the Council in support of the Buy Local Campaign; and, noted that she would provide the information for the proclamation. She advised that she also wanted to produce educational materials for residents; and, asked that they be distributed with the Town’s water bills. Ms. Ford noted that she was willing to do the work; however, she needed the Town’s help with the recognition aspect. She advised that she would like to develop a loyalty card that would include discounts to encourage residents to use Middleburg shops and restaurants; however, she suggested there may be resistance from businesses to giving a discount. Ms. Ford expressed her opinion that this was necessary in order to encourage residents to shop locally; and, would pay off down the road. She explained that she was not well enough known throughout the community to go into the shops and ask for their participation; however, she was willing to help. Ms. Ford advised that she could also prepare the press releases and do the media work; and, suggested that if the program became large enough, she would need help distributing the media materials through Bendure Communications. She asked for Council’s input as to whether this program was worth doing; and, whether they felt they could consider her request.

Councilmember Littleton expressed his opinion that this was a great idea. Vice Mayor Kirk asked whether Ms. Ford has spoken with the Middleburg Business and Professional Association. Ms. Ford confirmed that she has been working on this program herself; and, would contact them when she had more details. She expressed her opinion that they would participate. Councilmember Murdock asked who Ms. Ford would consider to be “local”. Ms. Ford noted that this was a hurdle she would have to overcome. She advised that she didn’t live in Town; however, she had a Middleburg address and considered herself to be a local. Ms. Ford noted that she would like to see her neighbors shopping in Middleburg. She reiterated her thoughts that there may be concerns about a loyalty card program. Councilmember Murdock asked where the line would be drawn for who qualified. Councilmember Snyder suggested there should be no line

for a loyalty card program. He further suggested that with regard to communications, the line should include the Town and greater Middleburg area as a start. Ms. Ford advised Council that she would like to include The Plains and Upperville. Councilmember Snyder agreed she should start with those areas that identify with Middleburg. Councilmember Patterson suggested that there were other items that were currently underway that could be done in place of the loyalty card. She explained that the Middleburg Business and Professional Association was already looking at a re-usable bag that could be used in place of a card; and, explained that residents could purchase the bag which would then be their identity as a repeat customer. Ms. Patterson suggested the bags not be sold as cheaply as normal; and, that they be used as a fund raiser. Councilmember Shea advised Council that the Professional Association has spoken with Go Green about designing the bags. Councilmember Patterson advised Council that her research revealed that a woman in Washington State developed a bag program, with all the area merchants carrying them for purchase and use. She explained that the bags were then kept in cars as a reminder to buy local. Ms. Ford expressed her opinion that there were some wonderful models available; and, suggested there was a need for some of the shop owners to educate themselves, which was just as large a challenge. Councilmember Patterson advised Council that she was hearing that a lot of merchants were considering trying new and different things. She suggested that now was a good time to reach out to them with new ideas. Ms. Ford reminded Council that there was a perception that Middleburg was an expensive place to shop; and, that those who live here could not afford to shop here. She suggested the need to address this perception. Ms. Ford noted that tourism was down; and, suggested that while tourist business was needed, local business was also needed. She reminded Council that while residents could not shop in every store, they could shop in a lot of them; and, suggested the need to get the message out. Ms. Ford suggested that if someone could not afford to go out to dinner, they may be able to go out for dessert. She expressed her opinion that there were things available in all price points. Councilmember Murdock expressed her opinion that this would be a wonderful program; and, noted that the businesses were suffering. Ms. Ford explained that she didn't want the residents' options to be Amazon or Wal-Mart. She asked that someone from Council work with her. Vice Mayor Kirk noted that the Council already had a recommendation in that regard.

Councilmember Murdock moved, seconded by Councilmember Snyder, that Council authorize the Economic Development Coordinator to work with Genie Ford on the development of a Buy Local Campaign, contingent upon any out-of-pocket expenses for the Campaign receiving prior approval from the Town Council.

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

Council Approval – Reduction of Steeple Chase Performance Bond

Town Planner Beniamino reported that Steeple Chase Run has asked for a reduction of the \$327,000 performance bond being held by the Town. He advised Council that the staff has identified those areas that have been completed; and, noted that they total 55% of the public infrastructure. Mr. Beniamino noted that this excluded the \$148,000 utility bond; and, advised that he was working with Loudoun Water on a review of that bond. He advised that the current bond could be reduced by \$142,658, based upon the formula used by Loudoun County.

Councilmember Littleton moved, seconded by Councilmember Snyder, that Council approve a request from Bob Battel to reduce the cash performance bond held for the Steeplechase Run Project by \$142,658.

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

Council Approval – Release of Performance Bond – Middleburg Automotive

Town Planner Beniamino reminded Council that from 1999-2004, the Town dealt with the Middleburg Automotive Project. He reported that recently he and the Town Attorney worked with the applicant to see if they could facilitate the project; and, explained that this resulted in the posting of a cash bond in order to get the necessary permits. Mr. Beniamino advised Council that the staff set a deadline of February 10, 2009 for completion of the work; however, it was not done. Mr. Beniamino explained that the applicant then indicated that he did not want to construct the carwash; and, instead only wished to expand the current building for retail space. At that point, the staff suggested that he withdraw his old site plan and submit a new one. He noted that, ultimately, Mr. Moshari would have to post a new bond. Mr. Beniamino explained that he posted \$82,000 in cash for the first bond; and, would like it returned until his new site plan was approved. Mr. Beniamino advised Council that Middleburg Automotive would actually get their money back since it was tied to a site plan that was no longer valid.

Councilmember Snyder moved, seconded by Councilmember Shea, that Council approve the release of the cash performance bond held for Middleburg Automotive for their project located at 13 & 15 E. Federal Street which has been withdrawn.

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

Discussion Items

Draft Identity Theft Protection Policy

Town Attorney Whiting reminded Council that during their last work session, they asked that a definition for the term “service provider” be added; and, noted that it was included in the policy in Council’s agenda materials. She explained that the definition tied into the policy requirements that would ensure that any service providers who had access to personal information for the Town’s utility customers would have to comply with the Fair and Accurate Credit Transactions Act of 2003. Ms. Whiting reminded Council that the Identity Theft Protection Policy needed to be implemented as the result of a federal mandate on giving reasonable security for personal information of utility customers who pay for services they have already received. She advised that while this mandate did not extend to tax payers, the Town’s unified accounting system essentially ensured that all categories of personal information would be protected. Councilmember Snyder advised Council that he was satisfied with the draft as written. He asked what was needed in order to advance the policy. Town Attorney Whiting advised Council that she would prepare an enacting resolution for consideration during the next work session.

Return of Mail Drop Box – Intersection of Washington/Madison Streets

Councilmember Murdock noted that the Mayor sent a letter to the U.S. Postal Service regarding the removal of the mail drop box located at the intersection of Washington and Madison Streets. She advised Council that Norris Beaver who was listed as Middleburg's Post Master was no longer the Post Master. Town Clerk North explained that she took the name of the Post Master off the sign in the Post Office; and, advised that she would make note of this change. Councilmember Murdock expressed her opinion that the letter was a good one. She reiterated that the post box has been removed; and, the Council has heard citizen complaints. Ms. Murdock reiterated her opinion that the Mayor and Town Clerk wrote an excellent letter asking for its return. Vice Mayor Kirk noted that the box was collected twice a day; and, did not involve a large expense. Councilmember Murdock noted that the letter asks that the Postal Service not make it harder to use the mail service.

Information Items

Town Planner Beniamino advised Council that a public hearing on the Ramsey rezoning application was scheduled to be held during their April 23rd work session. He noted that it was a simple rezoning that passed through the Planning Commission with no comment. Mr. Beniamino reminded Council that the Town attempted to secure an up-zoning of this same property in 2003. He explained that there was a chance that he may be absent from the meeting; and, advised that he would attend if Council felt it was necessary. Council agreed that Mr. Beniamino could miss the meeting.

Vice Mayor Kirk announced that the Upperville Fire Department would hold a breakfast on April 12th from 8:00-11:00 a.m. She noted that the Middleburg Fire Department held a successful dinner last weekend. Councilmember Patterson announced that her business, Mello Out, was currently holding an open mike night; and, expressed hope that her restaurant was currently filled with young people.

There being no further business, a motion was made to adjourn the meeting at 7:00 p.m.

APPROVED:

Darlene Kirk, VICE MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk