



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



**6:00 p.m.**

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**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

The Town Council of the Town of Middleburg, Virginia held public hearings and their regular work session on Thursday, March 26, 2009 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis opened the first public hearing at 6:00 p.m.

**PUBLIC HEARINGS**

Zoning Text Amendment 09-01- Pertaining to temporary uses and itinerant vendors

Town Planner Beniamino reported that this ordinance would add a section to the zoning ordinance related to temporary uses and itinerant vendors. He explained that the regulations would address construction and sales trailers, portable restrooms, model homes for subdivisions, the temporary sale of merchandise, itinerant vendors, PODS, dumpsters in residential areas, and right-of-way prohibitions on sales.

No one spoke and the public hearing was closed.

Town Code Amendment 09-01- Chapter 63.1 pertaining to noise

Town Planner Beniamino reminded Council that this ordinance involved a revision to the Town's noise ordinance; and, noted it would be enforced by the Police Department.

Vice Mayor Kirk asked whether the staff had received any calls regarding the proposed amendment. Town Planner Beniamino advised that he received no calls; however, citizens had talked with him regarding the amendment. He noted that those individuals were generally not in favor of the amendment; however, they were small in number.

No one spoke and the public hearing was closed.

## REGULAR WORK SESSION

Mayor Davis called the regular meeting to order at 6:03 p.m.

### Action Items-

#### Council Approval - Zoning Text Amendment 09-01: Temporary uses and itinerant vendors

Town Planner Beniamino advised Council that the Planning Commission has held a public hearing on this ordinance as required. He reminded them that months ago, they dealt with the ordinance at their level; and, he incorporated the changes they requested. Mr. Beniamino noted that the Planning Commission made some small changes. He advised Council that Councilmember Shea called him earlier in the day with some questions, which he has addressed. Councilmember Shea noted that her question regarding a definition for the term “construction” remained. Town Planner Beniamino explained that the question revolved around the definition of “construction” as identified in Section 64(A)(1) and how the staff would determine whether something was under construction. He reminded Council that not every aspect of the zoning ordinance was defined in the document; and, some issues were left up to the Zoning Administrator to define. Mr. Beniamino suggested that if the Council was comfortable, they could attach a time limit to this item. He expressed his opinion that it would be difficult to define what construction was; and, to include every possibility that could arise. Mr. Beniamino noted that if an individual were aggrieved by the Zoning Administrator’s decision, they could appeal it to the BZA. Councilmember Snyder noted that the problem was that there were people who would want to take advantage of any omission; and, asked whether there was a way to preclude it. He advised Council that he understood Councilmember Shea’s concern; and, suggested that a limitation be imposed to include an annual renewal with evidence of progress on the project. Town Planner Beniamino cited the examples of the Salamander and Chinn’s Crossing Projects; and, questioned whether their slow down would be a determination of stopping that would require the removal of the construction trailers. Councilmember Snyder expressed his opinion that this was a valid concern; and, explained that he was trying to address it with the annual permit. He asked what was reasonable; and, suggested it was a year. Councilmember Shea questioned whether the Town would want to get into something that would demonstrate that construction was on-going; and, suggested it be something that could be easily measured. Town Planner Beniamino asked whether the public hearing must be re-advertised if the ordinance was changed. Town Attorney Whiting confirmed the Council could include time limits without re-advertising the public hearing. She suggested, for administrative purposes, the consolidation of the timetable with the public improvements agreement and bond. Ms. Whiting reminded Council that the Town did not accept a bond for longer than twenty-four months, at which time it must go to a twelve month approval period. She reiterated her suggestion that the Council may want to roll this issue into that process so the staff would look at the progress as part of a single administrative review. Town Planner Beniamino reminded Council that the draft ordinance already limited construction to a maximum of two years. He recommended that he review the language; and, bring back suggested changes. Councilmember Murdock asked whether this would require a second public hearing. Town Attorney Whiting explained that the Council could make the provisions more restrictive; and, suggested the proposed changes would fit within the summary of the advertised ordinance. She further explained that the prohibition was that if the change allowed for greater intensity/density than was advertised, this would trigger the need to re-advertise the public hearing. Ms. Whiting suggested that since the proposed changes were more restrictive, they would fit within the topic as advertised. Vice Mayor Kirk expressed her opinion that the changes as discussed would make enforcement less judgmental. Mayor Davis noted that action on this item would wait to the next meeting.

Council Approval - Town Code Amendment 09-01 pertaining to noise

Town Planner Beniamino reminded Council that they have previously dealt with this amendment. He noted that he took the changes they requested; and, forwarded them to the Planning Commission. Mr. Beniamino reminded Council that the Commission was not required to hold a public hearing; however, they did with no one speaking other than members of the Commission itself. He noted that Councilmember Shea raised some issues he would like to review. Mr. Beniamino reported that Planning Commission member Kathy Ribauda was opposed to the ordinance as written as she wanted to include the use of a decibel meter. He reminded Council that they dealt with that suggestion at their level. Mr. Beniamino noted that the Planning Commission meeting minutes were included in the agenda materials so the Council could understand their position.

Town Planner Beniamino reiterated that Councilmember Shea asked about Section 63.1-4(f), pertaining to construction. He explained that her concern was that the first sentence could be construed to include simple improvements to a home. Mr. Beniamino recommended the phrase "that requires a zoning permit" be added; and, explained that this would allow this section to cover any large major projects, but not something such as the replacement of back porch steps. Councilmember Murdock noted that this would address her original concern of construction vehicle noise before 7:00 a.m. Councilmember Snyder expressed a reluctance to agree; and, noted that if a property owner wanted to remove and re-floor a deck at 5:00 a.m., he/she could make a lot of noise through the use of power tools. He questioned whether Council wanted to allow that noise. Town Attorney Whiting expressed her opinion that this type of work would require a zoning permit. Councilmember Snyder confirmed that no permit was needed to replace a deck floor. Vice Mayor Kirk reminded Council that they were trying to avoid impeding a homeowner from doing minor work on the weekends. She asked whether this section needed clarification. Councilmember Snyder asked how much noise the Council wanted to allow between 7:00 p.m. and 7:00 a.m. Vice Mayor Kirk noted that the Council didn't want a homeowner out at 5:00 a.m.; however, they wanted to allow work on the weekends. Councilmember Shea noted the definition of construction in section "f". She further noted the exemption for household tools and lawn movers, which contained different hours; and, suggested the two sections were in conflict. Councilmember Snyder explained that he was trying to determine how much noise the Council would tolerate at odd hours; and, suggested it was probably not a whole lot. Councilmember Shea suggested there was a difference between having something in an ordinance, such as the construction of a building, and a neighbor who said a noise was too early for the neighborhood. Councilmember Snyder noted that he was talking about addressing those who were uncooperative. Vice Mayor Kirk agreed with Councilmember Shea that the different hours were in conflict. Councilmember Littleton expressed his opinion that the period between 7:00 p.m. to 7:00 a.m. was fair. He noted that someone could intentionally make a lot of noise at 7:30. Town Planner Beniamino reminded Council that their original discussion also addressed the mowing of lawns after 7:00 p.m. during the summer; and, noted that the Council was trying to avoid such a prohibition. Councilmember Murdock noted that this would be allowed if the ordinance were left as written. Town Planner Beniamino noted that Councilmember Shea also asked about the warnings that would be used and how the ordinance would be enforced. Councilmembers Snyder and Murdock agreed that they were happy with the ordinance as written. Town Planner Beniamino noted that Councilmember Shea also raised a concern about commercial vehicles, trash collection and garbage pick-up. He reminded Council that they tried to differentiate between town garbage collection and commercial vehicles. Town Administrator Schiro reminded Council that the goal for the downtown area was to collect the refuse as early as possible in order to get it off the street so it didn't impede traffic. He noted that residential collections could occur later; however, he advised that it may be difficult to get the contractors to agree to a much later time. Vice Mayor Kirk reminded Council that her concern was related to the collection of the Fire Department's dumpster by a commercial

operator. Councilmembers Murdock and Snyder reiterated that they were ready to approve the ordinance as written. Councilmember Shea advised Council that she wanted to raise the possible disagreement regarding section “f”; and, explained that the other items were more informational. Town Planner Beniamino recommended that if the Town were to encounter problems with enforcement, the Council could always look at the ordinance again. He expressed his opinion that the draft ordinance offered protection for the citizens, while giving the Police Department some discretion. Councilmember Shea asked Chief Webber how warnings would be handled. Chief Webber confirmed that, typically, when the Department received a complaint, the violators were given one or two warnings. He noted that whether a second warning was issued was based on their reaction to the initial warning; and, whether they were willing to take care of the problem.

*Councilmember Snyder moved, seconded by Councilmember Murdock, that Council adopt an ordinance approving Town Code Amendment 09-01 to repeal Town Code Chapter 63 and adopting Chapter 63.1 in its place, entitled “Noise”.*

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)

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Council Approval - Request to waive sidewalk requirements – National Sporting Library

Town Planner Beniamino reminded Council that they have received a small sketch in their agenda packet showing the National Sporting Library’s sidewalk design. He explained that the Library was requesting a waiver of the sidewalk requirement in the subdivision ordinance. Mr. Beniamino advised Council that the Planning Commission’s proposal, when going through the site plan review, was to look at possible solutions to the dilemma of how to place the sidewalk along Washington Street and The Plains Road without destroying the aesthetics of the property; and, advised that one idea was to provide a pedestrian path that would cross the library’s property instead of a sidewalk on the road. He noted that the sidewalk would require the movement of the stone wall and the re-grading of the property. Mr. Beniamino explained that in the mean time, the applicant sought a waiver of the requirement. He displayed a large copy of the sidewalk plan; and, explained that it would involve changing the grade and stairs at the intersection of Federal Street/The Plains Road to eliminate them and to install an ADA accessible entry that would be moved down The Plains Road. Mr. Beniamino noted that crosswalks would be provided at the entrances; and, a sidewalk would be run down the length of the library’s property to connect with Lincoln Road. He advised Council that during its March meeting, the Planning Commission forwarded a recommendation that, while not the best, the sidewalk design was acceptable; therefore, they recommended the Council not grant the waiver request and suggested that they look at the proposal as an alternative. Councilmember Snyder asked whether the sidewalk would connect from Washington Street to the southern end of the library’s property. Town Planner Beniamino confirmed it would. He noted that it would not match perfectly with Lincoln Road; however, there would not be people walking into Town on the shoulder of the road. Councilmember Murdock asked whether it was correct that the Planning Commission recommended that the Council not grant the waiver. Town Planner Beniamino confirmed this was correct; and, explained that they thought that to waive the sidewalk requirement entirely would go against what the Town was trying to do in terms of providing pedestrian connections. Councilmember Shea asked whether this item would return to the Planning Commission if the Council did not approve the waiver, so they could work with the National Sporting Library. Town Planner Beniamino explained that the requirement for the sidewalk existed; and, at some time,

unless the Council wanted the sidewalk built and the stone wall moved, the Planning Commission would recommend the waiver with the idea of replacing it with a pedestrian path through the Library's property. Councilmember Snyder expressed his opinion that there would be a future waiver request. Town Planner Beniamino confirmed there would. Councilmember Murdock asked what would happen if the Council accepted the Planning Commission's recommendation and the work was done to allow for a later waiver. She explained that she was trying to advance the project. Town Planner Beniamino expressed his opinion that there were solutions to the issues. Councilmember Littleton asked for the opportunity to hear from the National Sporting Library.

Manual Johnson, Chairman of the National Sporting Library, advised Council that they were seeking a waiver of the pedestrian access requirements associated with their new project. He explained that they were not requesting a waiver in order to relieve them of the responsibility to provide an access, as they considered it very important to enhance the access to the site in order to bring more visitors to the Library and art museum. Mr. Johnson further explained that the waiver was about concerns of having a public sidewalk through the middle of their property. He apologized to the Planning Commission and Town Council for the past errors that have been made by failing to provide information and not communicating properly. Mr. Johnson advised that, while the Council may not be prepared to make a decision during this meeting, they would like to provide new information. He reiterated that the Library's main concerns in considering pedestrian access were related to aesthetics and the historic nature of the site, along with safety and liability questions and financial constraints. Mr. Johnson advised Council that they have a budget for the project; and, they wanted the pedestrian access to be attractive and logical. He further advised that in order to alleviate access concerns, an elaborate proposal was prepared by the planners and architects; however, the cost estimates were prohibitive. He reiterated that they tried to take into account the historic nature of Middleburg with the need to provide access through the site, while meeting the Library's concerns and doing so within the budget. Mr. Johnson suggested a good alternative would be to consider moving the access points to the other side of The Plains Road; and, advised that they would like to offer a presentation on this option. He noted that the Library was not trying to shift its responsibilities over to the Town; and, advised that they would help financially. Mr. Johnson reiterated that the Library saw this as a reasonable alternative; and, would help finance it within the ability of their budget. He advised Council that Hardy Johnston, the architect who prepared the plan for the museum, and Mike Massie, the engineer for the project, would present their plan for solving the access issue. Mr. Johnson explained that while his board was satisfied with the sketch plan in the Council's agenda packet, they were still concerned about the liability and safety issues; and, continue to have some doubts about the aesthetics. He noted, however, that the main point was cost; and, advised that they could not afford the alternative as shown in Council's agenda packet.

Hardy Johnston presented a photograph of the subject property. He pled for the Council to not disrupt the site; and, expressed appreciation of the unusual asset of having an old Federal mansion in its original setting. Mr. Johnston expressed his opinion that its preservation involved more than individual buildings; and, suggested it also included the landscape. He further expressed concern that a small intrusion would be an erosion of the historical landscape. Mr. Johnston explained that in developing the plans, he tried to avoid breaking the opening that existed; and, noted that the plans called for the new addition to occur on the western side of the property where it would not be as visible. He reiterated that the design allowed the old mansion to be visible from the corner; and, advised that he would like to preserve the landscape as well. Mr. Johnston reminded Council that it was rare to have a property that contained a mansion on its original site.

Mike Massie advised Council that he was asked to look at alternatives; and, noted that he looked at the zoning across the street. He expressed his opinion that the advantage of placing the sidewalk on the east side of The Plains Road was that it would continue an existing sidewalk network; and, would provide access to the ten commercial properties located there. Mr. Massie advised that it would also allow the Town to make a pedestrian connection back to West Federal Street. He proposed to bring the sidewalk down to the commercial property, construct a crosswalk over to the Library's site, and to eventually provide an extension of the walk from that point to Lincoln Road or further. Mr. Massie noted that this would reduce the number of pedestrian crossings and would prevent a dangerous situation. He reminded Council that there were drainage issues on the east side of The Plains Road; and, suggested that curb, gutter and a sidewalk would improve that situation. Mr. Massie reiterated that this option would provide a complete sidewalk network for the commercial businesses; would be beneficial for those located on the east side of the road; and, would be beneficial to the Town to partner with the Library.

Councilmember Murdock asked where the sidewalk would cross from the east side to the Library. Mr. Massie confirmed it would cross at the entrance where the existing trail was located. He advised Council that he could work with the Town Engineer on the best possible location; and, noted that there were sight distance issues to consider. Mr. Massie expressed his opinion that having the sidewalk on the east side of the road provided a better line of sight from a pedestrian crossing standpoint. He advised Council that he would not propose a crosswalk in the curve; and, would preferably put it closer to Lincoln Road. Mayor Davis asked whether there would be a crosswalk at the Library's main entrance. Mr. Massie confirmed this would depend on whether the sight distance was adequate. Councilmember Patterson reminded Council that VDOT would control the location of the crosswalk.

Town Planner Beniamino commended the National Sporting Library for the work they have done as a part of the waiver request. He noted that over the past several days, he has worked with members of Council on new ideas; and, advised that he agreed with the Library's concept in principal. Mr. Beniamino reminded Council of the lack of a comprehensive sidewalk plan; and, suggested it would be short sighted to propose connections to a network without a plan. He advised that he was not saying he didn't like the Library's idea; however, he suggested it should be based on a sidewalk plan that could be developed in the coming months. Councilmember Shea asked whether the Town had a sidewalk improvement plan. Town Planner Beniamino confirmed it had an inventory; however, it did not show the locations where it was important to make connections. He suggested the Planning Commission needed to decide where the most crucial connections lie. Councilmember Patterson advised Council that the Planning Commission, as part of the Comprehensive Plan review process, would like to add an additional chapter that dealt with pedestrian movement. She expressed her opinion that given the commercial development that was occurring, there must be a plan. Town Planner Beniamino expressed his opinion that this request may result in the development of a tool that the Town could use for years. He suggested it was very doable to create the plan in a timeframe that would satisfy the National Sporting Library so they could get their plan approved. Councilmember Snyder noted that the action before Council was to waive the sidewalk requirement for the site; and, advised that he was ready to act on that request. Councilmember Littleton suggested the Library withdraw the request. Mr. Johnson confirmed that he had no problem doing so as long as they could proceed with work toward the site plan approval. Town Planner Beniamino reminded Council that the waiver request could be brought back at any time. He noted that the idea for a sidewalk on the east side of The Plains Road only occurred over the last couple of days. Mr. Beniamino further noted that the site plan was almost ready for approval; and, suggested that by the next Planning Commission meeting, they may have a finalized plan. He reminded Council that once the site plan was approved, the Library still must come before them for approval of the Zoning Location Permit; therefore, final approval would not be granted until April/May.

*Councilmember Snyder moved, seconded by Councilmember Shea, that Council table action on the waiver request.*

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)

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Councilmember Murdock noted that she has been working with the Chairman of the Planning Commission and members of Council to advance this item. She expressed appreciation for the National Sporting Library’s comments; and, suggested great movement had occurred. Ms. Murdock noted that everyone was in agreement that this would be a wonderful project; and, that it would be the best sporting library in the country. Councilmember Littleton concurred that the new idea was a good one that would help not only the Town, but the Library. The remainder of Council thanked the representatives from the National Sporting Library for addressing this issue.

Council Presentation – Middleburg Elementary School

Martha Cotter advised Council that the joint committee, consisting of members of the Board of Supervisors and School Board, took a straw vote; and, recommended cutting the school budget more deeply. She noted that there has been some confusion as the School Board and County’s funding tiers were not the same; and, noted that the School Board’s tiers were 5%, 10% and 15%. Ms. Cotter advised that based on the straw vote, the school funding was through the first tier and into the second; and, noted that the closing of the Middleburg Elementary School was in the second tier. She asked that Council continue to lobby the Supervisors for full funding of the School Board’s budget.

Ms. Cotter advised Council that the other item of interest was the school boundary adjustment that was in the works for the County, particularly in the west. She noted that the School Administration asked for recommendations from the public; and, parents in Middleburg put together a plan to shift the elementary school boundaries so the Middleburg Elementary School would be filled. Ms. Cotter reminded Council that only forty children were needed to fill the school; however, the School Administration did not recommend any changes to Middleburg Elementary School’s boundaries. She noted that public hearings on the boundary recommendations were scheduled for March 31 and April 2 at the School Administration building in Ashburn. Ms. Cotter thanked Council for all they have done; and, asked for a show of support during the public hearings. She expressed her opinion that the boundaries needed to be changed; and, suggested it was almost bad faith for them not to do so when they could fill the school. Mayor Davis reminded Council that years ago, the district for Middleburg Elementary School contained a larger area to the west. She noted that this was changed so Banneker Elementary School’s population would be higher. Ms. Davis asked about the details of the boundary recommendation. Ms. Cotter explained that Plan 821 would remove one of the areas from Banneker and place it into the district for the Middleburg Elementary School. She expressed her opinion that it was a natural fit with the existing attendance area. Ms. Cotter noted that she spoke with Mike Lunsford of the Public School System’s Transportation Division, who advised her that the bridge that must be crossed has weight limitations that didn’t allow normal buses to go over it; however, they could use a smaller bus. She advised Council that Mr. Lunsford was willing to meet with the parents and use the small bus; therefore, this should not be an obstruction.

Mayor Davis asked who prepared the boundary plan. Ms. Cotter advised Council that Middleburg parents submitted the plan to the administration. She noted that it only pertained to Middleburg; however, it could be an amendment to another plan to realign the districts for Hamilton or Purcellville. Ms. Cotter advised Council that a member of the School Board stated that maybe the School System should start building smaller schools in the west. She noted that they were building an eight hundred fifty child school; and, must drain the small schools to fill it. Ms. Cotter expressed her opinion that the School Board erased mistakes like this by changing the boundaries.

Mayor Davis asked whether the Council should mention Plan 821 when they speak. Ms. Cotter confirmed they should. She expressed her opinion that School Board Member Priscilla Godfrey would propose it; and, noted that there seemed to be support among the School Board for it. Ms. Cotter noted, however, that the boundary adjustments would not happen until the end of April, after the budget decisions were made. Councilmember Patterson suggested this decision was premature since the School Board wouldn't know their budget. Ms. Cotter wondered whether the School System's Director of Planning had prepared a second plan if the small schools were closed; and, noted that there had been no mention of one. Vice Mayor Kirk suggested that a good point to raise was the past adjustment that moved children to help another elementary school; and, suggested now was the time to move them back to help Middleburg's school. Ms. Cotter expressed her opinion that the budget would be very challenging; and, suggested it was discouraging when there was such a simple solution.

The Council held some discussion regarding the public hearings and who should be present. Ms. Cotter advised Council that she was trying to get parents out to speak; and, noted that this was a rare opportunity. She expressed hope that the School Board would support Ms. Godfrey since this was her district; and, suggested there was support for the schools.

Ms. Cotter advised Council that School Superintendent Hatrick recently visited the Middleburg Elementary School and told the teachers that now was the time to submit for a change in jobs; and, suggested they put in their transfer to Colbert Elementary School. Ms. Cotter further advised Council that he told them that if they do so later, he did not know what would happen.

Council discussed the dates of the public hearings. They suggested the parents be encouraged to present their comments in a non-angry approach, as this was better received by governing bodies. The Council asked that Ms. Cotter provide them with key notes on the proposed boundary adjustment plan so they would have the correct figures when they speak. They thanked Ms. Cotter for her work to save the elementary school.

#### Council Review – Report on Loudoun County Community Action Board

Councilmember Shea reported that the budget has affected the LCCA Board, not drastically; however, they didn't know what funds would be available. She noted that they would get some additional funding because their clients were low income; however, at this time, they didn't know where the money would go. Ms. Shea noted that the Board was advancing the Weatherization Program; and, advised that she was working with that committee. She reported that the Weatherization Program would be available county-wide soon.

#### Council Review – Draft Identity Theft Protection Policy

Town Attorney Whiting reminded Council that during their last discussion of this item, they wanted the staff to talk about the issue of the collection of social security numbers. She advised that it was the staff's consensus that, while the number could not be required, they would like to try to collect them; and, would provide security by limiting access to them within the Town

office. Ms. Whiting advised Council that she made a minor edit to the policy to make it clear that if the staff were asking someone to confirm their social security number that they would only ask for the last four digits. She explained that if the Town found itself in an aggressive collection process, particularly if the individual was not located in the jurisdiction, having the social security number would be helpful. Ms. Whiting further explained that it was the staff's position that the numbers were needed to protect the Town's ability to collect bills.

Councilmember Patterson asked whether the Town would be liable in the event the numbers were lost or stolen. Town Attorney Whiting expressed her opinion that it would be immune as long as the Town had a reasonable process in place. She reminded Council that the Town was mandated to have some security in place for all categories of information; and, suggested the policy would have to be field tested. Ms. Whiting advised Council that the policy as written included items that the Town would probably not ever find itself dealing with; and, noted that it has never encountered the forwarding of credit reporting information. She noted that the staff already has some safeguards in place; and, explained that the contract for backing up the computer data off-site already addressed security items. Ms. Whiting advised Council that this policy could not be adopted and then put on a shelf; and, noted that she expected questions from staff, such as who could open and close a utility account. She noted the need to work through these issues; and, advised that, in those cases, the Town would be reviewing personal information. Ms. Whiting reminded Council of the need to face those issues; and, to stay networked with other utility providers and municipal organizations so the staff could be aware of issues when they arise.

Councilmember Snyder noted that the policy did not define the term "service provider" nor did it identify how a service provider related to the Town. He asked about the relationship between the two. Town Attorney Whiting confirmed she would review this section again. She advised Council that one example of a service provider was the company who provided off-site back-up of the Town's computer data. Councilmember Snyder noted that the Town was trying to restrict access to transactions. Town Attorney Whiting reiterated that the service provider must be contractually obligated to meet the Town's standards to protect data. Councilmember Snyder recommended the inclusion of a definition for a service provider. Town Attorney Whiting advised Council that she would bring this item back during the regular meeting.

#### Council Discussion – Status on Utility Systems

Town Administrator Schiro reported that Salamander planned to continue construction on both treatment plants; and, noted that the water treatment plant should be completed in October of 2009. He advised that he did not have an updated construction schedule for the wastewater treatment plant. Mr. Schiro noted that the Town was beginning to encounter a slowing of the process; and, advised that there were only a handful of workers present on the site at any given time. He further noted that the project management team was beginning to value engineer everything they could out of the project in an effort to achieve cost savings. Mr. Schiro advised that the progress and construction meetings were turning into battles, with Salamander saying they could not afford the items the engineers say are necessary; and, noted that he anticipated this would continue through the projects' completion. He reminded Council of the need for easements for the wastewater mains; and, advised that Salamander's engineers have provided three or four surveys that were incorrect or lacked the necessary information to go to recordation. Mr. Schiro advised that Anderson & Associates was now saying the Town must provide the survey work; and, noted that he has asked them to put their position in writing. Town Attorney Whiting offered to send a letter to Salamander explaining why they were committed to providing the survey; and, explained that they must engineer the project, which included telling her what easements were needed. She noted that she has repeatedly pointed out the need to identify what land the Town had the right to use and what was needed. Ms. Whiting reiterated that they were not showing the existing easements on the plats. She expressed her opinion that they did not

budget for the survey work. Ms. Whiting suggested that to say this was a Town responsibility was absurd. Councilmembers Littleton and Plescow suggested the Town Attorney draft a letter to Salamander explaining the Town's position.

Town Administrator Schiro advised Council that the other thing the staff has been working on was an evaluation of the existing wastewater treatment facility to determine the cost to operate it for an additional two years. He noted that the materials included in the agenda packet identified what needed to be done immediately and suggestions for the future. Mr. Schiro expressed his opinion that this was not an option as the manufacturer was too far into the fabrication of the membrane. Councilmember Murdock asked how the Town would operate the new treatment plant. She further asked whether there was any way to build a portion of the plant. Town Administrator Schiro confirmed the entire plant must be built; however, he noted that the question was whether the membrane could be installed in sections. He reiterated that the problem was that Salamander has a contract with the manufacturer for the entire system. Mr. Schiro suggested the next step was to see what options were available related to operations, such as efficiency and capacity. He noted that he had not addressed the issue of cost; and, suggested that keeping half the units off line would not significantly reduce the costs.

Councilmember Snyder noted that Salamander's delay had added several hundred thousand dollars of risk to the Town for the development of the property and the replacement utilities that they required be provided. He suggested the need to look at this risk when the Council considered the FY '10 utility budget.

Town Administrator Schiro reminded Council that when the plant came on line, the warranties would begin to run. He expressed concern about what would happen once the facility reached full capacity if the warranties expired while it was being operated at reduced levels. Councilmember Littleton asked whether there were other municipalities with this same membrane system that the Town could talk with. Town Administrator Schiro confirmed that Loudoun Water operated several such plants; and, shared his concerns.

Councilmember Murdock noted that even if the Town had the funds to pay for its operations, it did not have enough waste to feed the plant. Town Administrator Schiro confirmed this was a concern; and, noted that the plant was designed for a certain capacity. He suggested that if it were operated at a lesser capacity, the plant may not be as efficient; however, he advised that it would not damage it. Mr. Schiro reminded Council that the issue was serious in terms of the wastewater treatment plant; and, advised that there was a lot on the line in terms of operational deficiencies and cost. He noted that in his conversations with Salamander regarding operating costs, they were looking at the total budget to operate; whereas, the Town was only talking about the difference between the revenue from the existing customers and what would be lost. Councilmember Snyder reminded Council that Salamander would use water even before it opened. Town Administrator Schiro confirmed they would; however, he noted that it would not provide as much revenue as the entire inn. He reminded Council that thirty percent of the plant's capacity was reserved for the Salamander Inn.

Councilmember Snyder reminded Council that he had suggested the capacity issue be addressed in negotiations; and, noted that the Town was now talking about having its existing customers pay for roughly 75,000-85,000 gallons of water. Town Administrator Schiro advised Council that he calculated the pure operational costs; and, determined the cost to be \$120,000. Mayor Davis reminded Council that they have talked about seeking payment from Salamander. Town Administrator Schiro noted that Prem Devadas was surprised the number was not higher; and, suggested this option may not be off the table. He suggested it may be possible to defer the installation of part of the membrane system so Salamander could then assist with operating costs. Mr. Schiro advised that if he understood the Council, he would get with the Town Attorney to

draft a letter insisting that Salamander continue with construction and get the necessary easements. He noted that Salamander was now saying they did not have a budget to reimburse the Town for Whitman-Requardt's reviews; and, advised that those reviews were needed. Mr. Schiro expressed concern that if they did not occur, items would be cut that would affect the Town once it assumed ownership of the facilities. He suggested it could increase the Town's potential operational costs. Council agreed. Councilmember Snyder noted that these reviews were necessary even if the Town must pay for them.

Councilmember Snyder noted that even though Middleburg was getting rain, it was still six inches below normal. He suggested the Council may wish to consider initiating voluntary conservation. Councilmember Murdock noted that the Town was supposed to receive a couple days worth of steady rain. Councilmember Snyder reiterated that the Town's rainfall was less than four inches; where, it should be at eight or nine inches by now. He noted that he was simply putting this concern on the radar. Councilmember Littleton suggested it be discussed during the April work session.

### FY '10 BUDGET

Town Administrator Schiro advised Council that he was still waiting for some information; and, noted that the year-to-date revenues were the most current numbers available. He explained that in order to balance the budget, he approached it differently than in the past. Mr. Schiro advised Council that Page 1 of the budget document contained a summary of the General Fund revenues and expenditures; and, noted that the revenues did not include an increase in the real estate tax rate. He advised that it did, however, include a five cent increase on the cigarette tax. Mr. Schiro advised Council that his areas of concern included the meals tax revenue, BPOL revenue and real estate tax revenue. He reminded them that the real estate tax revenue was currently \$363,000, with the projections set at \$375,000; and, advised that he reduced next year's budget projection to \$365,000. Mr. Schiro noted that he also reduced the projected meals tax revenue to \$165,000 and the BPOL revenue to \$205,000. He reminded Council that this year's BPOL revenue included additional revenue due to the Salamander Project. Mr. Schiro noted that, in the past, the reimbursements for consultants were carried as expenditures in the Planning & Zoning budget; and, advised that he has proposed funds on the revenue side to off-set the expenses. He suggested that, as those fees come in, this would balance the budget. Mr. Schiro advised Council that the remainder of the revenues were pretty consistent with the first draft of the budget.

Town Administrator Schiro advised Council that the expenditures in the General Fund budget have been reduced by \$112,000; and, noted that Page 1 of the budget document identified the reductions by department. He explained that some of the reductions were for one-time capital purchases; and, some were in operations. Mr. Schiro advised that two big changes in the Administration costs included a reduction in his salary and the transfer of 20% of his and the Town Treasurer's salary to the Utility Fund budget. He noted that he spent at least 20% of his time on utility related items and the Treasurer spent at least 20% of hers on billings; and, explained that transferring these costs into the Utility Fund allowed him to reduce the General Fund budget. Mr. Schiro noted that the Town's building expenses didn't change much. He advised Council that the purchase of a new police car was eliminated from the Public Safety budget; and, noted that the lease payment for the most recently purchased car was included. Mr. Schiro suggested the Council may wish to re-examine the purchase of a police car during the mid-year budget review. He noted that a portion of the Street Superintendent's salary has been transferred to the Health Center Fund; and, reminded Council that the Advisory Board has agreed to take the staff costs out of their budget. Mr. Schiro noted that the benefits were broken out more finely throughout the entire budget. He advised Council that the Planning & Zoning budget didn't change, with the exception that he removed all capital and special projects. Mr. Schiro noted that the attorney's fees were reduced from \$15,000 to \$12,000 and the engineers' fees were

reduced from \$50,000 to \$40,000 as he did not anticipate as great a need for them unless the economy improved. He noted that the Economic Development budget was the same as was contained in the first draft. Mr. Schiro advised Council that the Pink Box Budget was changed on the revenue side in order to make things clearer. He explained that he was tracking the money that was put in the General Fund and was showing what was being taken out for operations and adding in the interest. Mr. Schiro advised Council that the Health Center Budget contained a slight contingency; and, reiterated that a portion of the Street Superintendent's salary was included in this budget.

Town Administrator Schiro reminded Council that the utility rates were proposed to increase by six percent; and, noted that the last sheet in the budget packet identified the proposed rates. He further reminded them that this increase was a part of the plan that was adopted by Council when they restructured the Utility Fund's debt. Mr. Schiro advised Council that he included \$50,000 in revenue from Salamander reimbursements; and, noted that this was for the engineering work to review the water and wastewater treatment plant projects. He explained that this allowed him to balance the Utility Fund budget. Mr. Schiro reminded Council that all of the employee costs have been removed from the Utility Fund expenditures due to the contract with Loudoun Water; and, noted that \$190,000 in contract costs was included in their place. Mr. Schiro noted that the current Utility Fund Budget, including Town employees was \$187,000; and, advised that once the new treatment plants came on-line, the Town would have had to have added another plant operator to the payroll. He advised that engineering costs of \$75,000 were included in the proposed budget. Mr. Schiro reiterated that a portion of the Town Administrator and Town Treasurer's salaries were moved into the Utility Fund Budget. He advised that the first page of the Utility Fund Budget contained the soft costs and debt service, while the second included the operational costs. Mr. Schiro stressed that these numbers must change if both of the new plants come on line by January of 2010. He confirmed that he has balanced the Utility Fund Budget to include a contingency reserve of \$53,000.

Councilmember Snyder suggested the need to adjust the availability fees as well this coming fiscal year. Town Administrator Schiro noted that those fees were increased by 8% last year; and, asked whether the Council wished to increase them by 6%. Councilmember Snyder agreed that 6% was fine. Mayor Davis inquired as to how much the availability fees were at this time. Town Administrator Schiro reminded Council that the fees were based on meter side. Town Planner Beniamino advised Council that a typical residential water and sewer tap was \$19,000. Mayor Davis noted that availability fees were discussed during the recent COLT meeting; and, advised that some jurisdictions' fees were higher. Councilmember Snyder noted that he tried to base those fees on fact.

Vice Mayor Kirk asked how the Town was doing on its water account collections. Town Treasurer Wheeler confirmed that some customers were delinquent; however, she advised that several have made payment arrangements. Councilmember Snyder asked about the amount in arrears. Town Treasurer Wheeler confirmed it was \$8,000. She explained that some customers were paying an additional \$1,500 per month between billing quarters in order to get caught up.

Town Administrator Schiro suggested that Council be given an opportunity to study the proposed budget. Vice Mayor Kirk expressed her opinion that it looked good. Councilmember Plescow thanked the Town Administrator for his hard work. Mayor Davis advised Council that she and the Town Administrator attended the Association of Northern Virginia Towns meeting today; and, learned that, no matter the size of the town, everyone was facing the same problems. She expressed her opinion that Middleburg was lucky in that while things were not good, they were also not as bad as they could be. Ms. Davis noted that a lot of work went into the development of the proposed budget; and, expressed appreciation for everyone's work. She suggested the need to get more numbers. Town Administrator Schiro expressed his opinion that the Town would not

receive much more in real estate tax revenue. Mayor Davis asked how much was outstanding in BPOL revenue. Town Treasurer Wheeler confirmed that some was outstanding; and, advised that she was not sure how much. She noted that the BPOL revenue was not down; and, exceeded projections due to the Salamander contractors. Ms. Wheeler reiterated that the BPOL revenue figures were still good even without the Salamander contractors; however, there were still a lot of businesses that have not gotten their business licenses.

Town Administrator Schiro asked that the members of Council alert him if they had any questions related to the proposed budget. He advised that if it was acceptable as presented, the Council needed to think about public hearing dates. Mr. Schiro suggested that a discussion be placed on the April work session agenda so he could follow-up with any budget-related questions Council may have.

### RECENT COMMERCIAL BURGLARIES

Chief Webber reminded Council that the recent burglaries were part of an on-going criminal investigation; therefore, he could only say so much. He noted that, at no point during his tenure with the Town, could he remember the volume of burglaries that have been experienced in the last few weeks; however, he advised that the County has experienced even more. Chief Webber reported that the Department has ten confirmed commercial burglaries; executed one search warrant; and, made two arrests. He noted that over the weekend, someone attempted to light a fire to a construction trailer on the Salamander property; and, advised that the Fire Marshall was actively working that case. Chief Webber noted that the Police Department has been in touch and working with the Loudoun County Sheriff's Department's Criminal Investigation Division on the burglaries; and, noted that the Sheriff's Department has provided additional night patrols and the Police Department has provided a greater night time presence. He advised Council that he felt good about what he knew; however, that was all he could say publicly.

Councilmember Snyder asked whether there was anything the Council could do to support the Police Department in the short term. Chief Webber noted that the community was the eyes and ears of the town; and, reminded Council that the Police Department could not solve these crimes alone. He suggested that everyone needed to ask questions and report anything they heard or saw, no matter how small. Chief Webber reminded Council that he has scheduled two burglary prevention classes within the next week, during which time the Sheriff's Department would have a specialist present to provide a one hour presentation on how to prevent commercial and residential burglaries. Councilmember Murdock asked that Chief Webber also assure the public at that time that the Department was working on these cases. Chief Webber confirmed that a lot of people were involved in the investigation; and, noted that he also planned to hold a question and answer period following the presentation. Mayor Davis noted that the Chief has been in contact with her on a regular basis. She suggested it was important that when the Council heard comments on the street to the effect that "nothing was being done" that they re-assure the public that it was being handled. Ms. Davis stressed the need to support the Police and Sheriff's Departments. Council discussed the concerns they have heard expressed by the public. It was noted that there were not enough police officers to protect and watch every business; and, that the businesses needed to secure their properties. Chief Webber advised Council that the Department was currently providing twenty-four hour police coverage, utilizing twelve hour shifts. He noted that he was also exploring outdoor cameras, like those used by the County, to monitor the streets.

Councilmember Shea noted the fear that existed in the community. She further noted that she has taught self-defense classes, which include tips for the development of strategies for family planning in an emergency; and, offered to present such a workshop in town. The Council agreed that much of the concern was fear related; and, noted the recent individual in the County who was followed home. They also noted the need for businesses and residents to lock their doors. The

Council discussed the need to not perpetrate rumors; and, noted that the regular communication they received from the Police Department allowed them to share when a rumor was false. They expressed appreciation for the officers' presence in businesses; and, noted that it was reassuring. The Council encouraged neighborhood contact; and, noted that residents were more relaxed knowing an officer was present. Chief Webber advised Council that the Police Department has worked more than four hundred eighty hours over the past two weeks; and, noted that they planned to stay on twelve hour shifts until these issues were resolved. Council discussed the need to educate residents and businesses on how they could assist the Police Department; and, suggested this be done through the Middleburg Business and Professional Association and the Town's newsletter. Chief Webber stressed that when a business owner suspects they have been the victim of a break-in, they should not enter the building; and, should instead call the Police Department to both assure their protection and to preserve evidence that may exist.

**Discussion**

Town Planner Beniamino advised Council that he has scheduled the community workshops/charettes for the week of April 27-May 2. He noted that four meetings would be held. Mr. Beniamino advised Council that he would send them an e-mail containing the dates; and, asked that they get back to him on which ones they could attend. He noted that he did not expect everyone to be at each meeting; however, he would like some members at each.

Vice Mayor Kirk announced that the Fire Department and Seven Loaves would hold fundraiser dinners on Saturday, March 28<sup>th</sup>. She further announced that individuals were being encouraged to turn off their lights at 8:30 p.m. on March 28<sup>th</sup> for Green Hour.

There being no further business, the Council moved to adjourn the meeting at 8:15 p.m.

APPROVED:

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Betsy A. Davis, MAYOR

ATTEST:

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Rhonda S. North, MMC, Town Clerk