



MIDDLEBURG TOWN COUNCIL
Monthly Work Session
Thursday, May 28, 2009
Town Office, 10 W. Marshall Street



6:00 p.m.

PENDING APPROVAL

PRESENT: Vice Mayor Darlene Kirk
Councilmember Trowbridge Littleton
Councilmember Catherine "Bundles" Murdock
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
Cindy C. Pearson, Economic Development Coordinator
David M. Beniamino, AICP, Town Planner
Debbie J. Wheeler, Town Treasurer
Steven Webber, Chief of Police

ABSENT: Mayor Betsy A. Davis
Councilmember Lisa Patterson

The Town Council of the Town of Middleburg, Virginia held public hearings and their regular work session on Thursday, May 28, 2009 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Vice Mayor Kirk opened the first public hearing at 6:00 p.m.

PUBLIC HEARINGS

Public Hearing- Ordinance to amend Town Code Chapter 97 to increase the cigarette tax

David Beniamino, 23363 Sam Fred Road, appeared before Council as a citizen in opposition to the use of the proposed cigarette tax to help balance the Town budget. He expressed his opinion that, over the years, smokers have faced increased discrimination. Mr. Beniamino noted that with the economic downturn, federal, state and local governments have turned to the cigarette tax, as opposed to an increase in real estate taxes, to fund their budgets. He expressed his opinion that the cigarette tax was inappropriate; and, helped to fix the budget shortfalls on the back of smokers, who gained no benefit from maintaining the current level of Town services. Mr. Beniamino suggested that the owners of real estate stood more to benefit; and, should be the ones tasked with sharing the budget shortfall burden. He noted that the cigarette tax has resulted in his purchase of cigarettes and other goods twelve miles away in Stoneridge, where there was no tax. Mr. Beniamino suggested that others may be doing the same, resulting in decreased revenues for the Town. He noted that while he expected his concerns would be ignored by some who felt he should just quit smoking, he believed that he needed to tell someone about his concerns or nothing would ever change.

No one else spoke and the public hearing was closed.

Public Hearing - Ordinance to amend the schedule of water and wastewater charges

No one spoke and the public hearing was closed.

Public Hearing - Proposed FY '10 Budget

No one spoke and the public hearing was closed.

REGULAR MEETING

Vice Mayor Kirk called the regular meeting to order at 6:02 p.m.

ACTION ITEMS

Council Approval – Ordinance to amend Town Code Chapter 97 to increase the cigarette tax

Councilmember Murdock inquired as to the amount of the cigarette tax; and, whether it was in line with what other localities charge. She expressed her opinion that what was proposed was not too high. Councilmember Snyder noted that the Town was proposing to raise the tax from \$.50 to \$.55 per pack. Town Administrator Schiro noted that the amount of the tax varied throughout the localities in Northern Virginia. He confirmed that Middleburg was not the highest rate. Vice Mayor Kirk expressed her opinion that the point was that, until two years ago, Middleburg did not tax cigarettes.

Councilmember Snyder moved, seconded by Councilmember Littleton, that Council adopt an ordinance to amend Article X of Chapter 97 of the Town Code to increase the levy on the cigarette tax to \$0.55 per pack of 20 cigarettes, amending Section 97-61.

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

No – N/A

Abstain: N/A

Absent: Mayor Davis and Councilmember Patterson

(Vice Mayor Kirk did not vote as there was no tie to require her vote)

Council Approval – Ordinance to amend the schedule of water and wastewater charges

Town Administrator Schiro reminded Council that both the availability and user fees were proposed to increase by six percent (6%). He noted that the agenda contained the information on the current rates, as well as the proposed rates. Councilmember Snyder reminded Council that the Town's financial counselors recommended that the Town pursue a regular schedule of incremental rate increases, with 6% being the recommended amount.

Vice Mayor Kirk noted that the Town of Leesburg was recently sued over their out-of-town user fees. Councilmember Snyder confirmed they were charging double the in-town rate for their out-of-town customers; and, Judge Horn ruled that this was unreasonable and that the Town could not justify it. Town Attorney Whiting explained that Judge Horn ruled that there was no evidence of reasonableness to support the rate difference; and, that the rate study that the Town had done basically accepted the premise that the out-of-town rates would be double without an analysis. She noted that the Town has appealed the ruling; and, Judge Horn has suspended his order until the fall so the Town could conduct a rate study. Councilmember Snyder noted that Middleburg had a handful of out-of-town customers on Landmark School Road, near Well 2; and, advised

that those customers were brought into the system without having to pay availability fees. He expressed his opinion that the Town should be able to come up with an adequate defense considering the fact that it was a modest increase.

Councilmember Murdock noted that the residents of the Ridgeview Subdivision experienced brown water over the weekend; and, asked why. She advised that one resident told her that she thought the rates were very high considering that she had to purchase bottled water. Councilmember Snyder noted that the Town was spending what it could in order to improve the system; and, advised that this could not be done unless the Town funded the utility to match its expenses. Councilmember Shea expressed her opinion that it was painful to have to raise rates during this economy; and, noted that six percent seemed like a lot. She advised, however, that the Town could not decline to raise them and keep the system operating.

Councilmember Snyder moved, seconded by Councilmember Littleton, that Council adopt an ordinance to amend the schedule of water and wastewater charges to revise water and sewer user charges and availability fees.

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

Council Approval – FY '10 Budget (first reading)

Councilmember Snyder noted that the Council had discussion of the budget on the agenda; and, was being asked to approve it on first reading. Town Administrator Schiro noted that the Council was only being asked to acknowledge the budget; and, was not adopting it. Councilmember Littleton noted that the recommendation was just to approve the budget on first reading.

Vice Mayor Kirk noted that she was sad that the Town could not offer the employees even a small raise; and, that it must raise the utility rates. Councilmember Murdock noted that there was no money available for raises. Councilmember Plescow noted that she was also sad that raises could not be offered; however, the money was not available. Vice Mayor Kirk suggested the Council needed to look at other items in the budget.

After some discussion, the Council agreed it did not wish to approve the budget on first reading; but, rather would wait until the June meeting to adopt the appropriations ordinance.

Council Review – Report on Loudoun County Community Action Board

Councilmember Shea reported that the Loudoun County Community Action Board was participating in the Weatherization Program that was available to lower income residents; and, noted that people making two and a half times the low income amount could qualify for energy work on their homes. She noted that the type and amount of work offered has changed under the new standards. Ms. Shea suggested that Council encourage anyone they knew who was moderately low income to apply for the program; and, advised that they did not have to own the property. Councilmember Snyder asked whether the level to qualify was two and a half times the low income amount; and, noted that this was almost immoderately low income. Councilmember Shea confirmed it was either one and a half or two and a half times the low income amount.

Town Planner Beniamino noted that sometimes the types of programs described by Councilmember Shea did not work well in the Town, particularly in the Historic District where energy efficient windows were not allowed. Councilmember Shea noted that there were areas outside of the Historic District that would qualify.

Council Discussion – Results of Community Workshops – Ridgeview Area

Town Planner Beniamino thanked the members of Council for participating in the community workshops. He noted that the Planning Commission discussed this item earlier in the week; and, advised that they would like a joint meeting between the Council, Commission and HDRC within the next month so they could come together so Council could direct them. Mr. Beniamino suggested that if this was not possible, they would like some direction from Council as to how they should proceed. He reminded Council that he handled the workshops by not telling the public that the Town had its mind made up. Mr. Beniamino expressed his opinion that there was an even split, with 33% of the residents not wanting anything done before they heard the presentation, 33% wanting something done before they heard the presentation; and, 33% not knowing how to proceed even after hearing the presentation. He advised that his concern, prior to the workshops, was that people would be opposed to doing anything in Ridgeview; and, noted that this did not occur. Mr. Beniamino asked how the Council wished to pursue this matter – either a historic district overlay, changes to the zoning ordinance or a combination of the two.

Vice Mayor Kirk expressed her opinion that no one wanted the boards to develop two different options; and, noted that this would involve a lot of work. Councilmember Snyder advised Council that based upon his reviews of the zoning ordinance during his ten years on the Planning Commission, he would prefer that they develop changes to the R-2 zoning ordinance. He noted that this district was developed to make Ridgeview comply with a zoning district in hindsight; and, advised that his personal suggestion as a member of Council was to see how well the Town could address the concerns in the zoning ordinance. Mr. Snyder suggested that if the Planning Commission was unsatisfied that they have adequately addressed the issue, they could then explore the option of a historic district overlay. He reiterated that the first option should be to review the R-2 District regulations, as well as any other regulations the Commission wanted to review, to see if the issues could be adequately addressed this way. Town Planner Beniamino expressed his opinion that the R-2 District was implemented after changes were made to the original Ridgeview Subdivision. He suggested the R-2 regulations were written to allow as much flexibility as possible for the smaller lots; and, noted that as the boundaries were adjusted over the years to provide for larger lots, the regulations allowed for houses that were significantly larger. Mr. Beniamino advised that the historic district would allow the HDRC to be flexible. Councilmember Snyder noted that the R-2 district was developed in the 1970's as a part of the Comprehensive Plan. He advised that, at that time, there were concerns regarding workforce and affordable housing; and, suggested that those concerns have now been addressed through projects such as Windy Hill and the project on Stonewall Court. Mr. Snyder expressed his opinion that the Town now needed to consider how it wanted to see the subdivision grow; and, suggested that the comprehensive way to do so would be to re-examine the zoning ordinance from that point of view and then determine whether that was sufficient to address the McMansion issue. He reiterated that the Planning Commission could come up with an alternative approach if they felt this was necessary.

Councilmember Shea suggested this was fine from an administrative basis; however, she suggested that more concrete information was needed for dissemination to the public. She advised that, in reading the minutes, she gleaned that people wanted a combination of options. Ms. Shea suggested that this needed to occur on the Planning Commission and Council level before they asked the public to comment. She expressed her opinion that the residents left the workshops somewhat confused. Councilmember Snyder agreed that before the Council changed

anything, they should go back to the public with the details to secure their input. Town Attorney Whiting wondered whether a thirty-five foot height limit in Middleburg was appropriate regardless of zoning district; and, suggested that thirty feet may be more appropriate. Town Planner Beniamino noted that this was also raised by the Planning Commission. He advised that they also discussed changing to a floor-area-ratio (FAR) system that would allow for flexibility between one- and two-story homes. Vice Mayor Kirk noted that this would allow for large houses on smaller lots. Town Planner Beniamino confirmed it would not if the ordinance were written properly. Town Attorney Whiting noted that Lovettsville used a combination lot coverage and maximum footprint limitation so one could achieve lot coverage but not exceed the footprint limitation; and, suggested this would address some of the massing issues. Town Planner Beniamino suggested that the option offered by the Town Attorney would work in a subdivision with the same sized lots, but not one with different sized lots such as Ridgeview. Councilmember Snyder suggested that the solution examine lot size rather than looking at a certain boundary.

Councilmember Shea suggested this was not the time to discuss solutions; and, noted that the question was where did the Council go from here. She advised that she liked the idea of a joint meeting. Councilmember Littleton suggested the issue was about blending; and, noted that the Town did not want a big differential. Councilmember Snyder advised that the reason he did not want to have a joint meeting yet was that he did not want to craft a specific solution. Vice Mayor Kirk suggested a joint meeting was needed as the Council was confused about the issue. Councilmember Murdock advised the Council that she was about to write a letter to the editor asking the residents where they were during the meetings. She noted that during the first workshop, there were five Town officials and five Ridgeview residents; during the second meeting, there were three officials and two Ridgeview residents; during the 3rd meeting, there were five officials and one Ridgeview resident; and, during the 4th meeting, there were five officials and three Ridgeview residents. She suggested that the Town did not hear what the Ridgeview residents wanted; and, noted that this was through no fault of the staff. Ms. Murdock advised that she was very impressed by the members of the HDRC and Planning Commission; and, noted that she learned a lot from them. She suggested that she needed to learn more. Ms. Murdock advised that she came away wondering about the Town's long-range future; and, noted that she has been told by residents that they could not afford to retire in the Ridgeview Subdivision because of taxes and the utility rates, which would never come down. She suggested that to strict the house sizes may mean that residents could not sell their homes to others who wished to build larger, more proper sized homes. Ms. Murdock expressed her opinion that the subdivision may change. She advised that it was fine to leave the subdivision alone; however, she asked whether the community could afford it. Ms. Murdock suggested the big picture needed to be studied before looking at individual lots. She noted that she would like to have a joint meeting; and, asked how close the Town was to making a decision. Councilmember Snyder noted that the Council was very far from making one.

After some discussion, the Council agreed it wanted to hear the options from the HDRC and Planning Commission. There was some discussion as to whether the workshop minutes, or a summary, should be sent to the press. It was agreed that the workshops resulted in questions; and, noted that the Town did not yet have the choices. It was also noted that the workshops did raise the public's awareness. It was suggested that prior to the joint meeting with the Council, the HDRC and Planning Commission should review the options; and, summarize their thoughts so the Council would know what its experts thought before the joint meeting was held.

Council Discussion – Request to discuss solicitors

Chief Webber asked the Council to consider amending the current solicitors' ordinance, which prohibited soliciting unless being invited onto residential property. He noted that the ordinance did not address soliciting in the business district. Chief Webber advised Council that recently, the Town experienced three cases of soliciting in the business district – one for the sale of paintings, one for a fundraiser for a deaf basketball team and one for the sale of magazine subscriptions. He noted that businesses and residents were calling the Police Department as they did not like the solicitations. Chief Webber suggested the Council consider adopting an all inclusive ordinance that would address both the residential and business areas or an ordinance that would address each area separately. He further suggested that the ordinance require solicitors to get a permit and pay a fee, which could provide revenue for the Town; and, which would restrict them to the business district area. Vice Mayor Kirk asked how the matter was currently handled. Chief Webber confirmed there was nothing under the current ordinance. There was some discussion about the difference between solicitors, itinerant vendors and vendors who sold goods as a part of a festival or event. Town Planner Beniamino noted that the itinerant vendor ordinance addressed the latter two.

Town Administrator Schiro suggested the Town Attorney become involved in this matter. He noted that non-profit organizations were allowed to solicit under the State Code; and, could be required to register with the Town, but could not be charged a fee. Town Attorney Whiting advised Council that the current ordinance, as written, would not be upheld by the courts.

Council held some discussion about the affects of a solicitor's ordinance on Town businesses, non-profit organizations, those campaigning for public office, religious organizations or students selling fundraisers for their schools, as well as the need to protect the citizenry. It was suggested that the Town Attorney draft an ordinance that would allow for soliciting using a permit system; and, that the two districts be handled separately. The Council further suggested that the staff review several communities' ordinances. Town Attorney Whiting noted that, unless recently re-written, Leesburg's ordinance may not be constitutional. She advised that she would put out an inquiry on the local government attorney's list serve. Chief Webber noted that Loudoun County utilized a solicitor's permit system; and, noted that, periodically, solicitors would say they have a Loudoun County permit. Vice Mayor Kirk asked the Town Clerk for her experience in this area. Town Clerk North noted that Front Royal used a permit system like that described by Chief Webber. She advised that the Town charged a fee of \$500, which helped to keep some solicitations down. Ms. North noted that having the solicitors register with the Town was helpful as the Police Department had information on them when it received a citizen complaint.

Council Discussion – Request to waive setback requirement – Middleburg Automotive

Town Planner Beniamino explained that the applicant has withdrawn his request so he could get more information to the Planning Commission. He expressed his opinion that this matter would return to the Council within a month.

Discussion

Vice Mayor Kirk reported that she has observed parking problems in the residential areas, including parking on the wrong side of the street, parking in the roads, and parking so as to block sight distance. She asked that the Police Department keep an eye on this problem; and, noted that motorists need to be able to make a turn. Councilmember Murdock reminded Council that there was nowhere from some residents to park. Vice Mayor Kirk reiterated the need to keep an eye on the problem.

Town Administrator Schiro reminded Council that the Mayor previously mentioned a Habitat for Humanity Project. He advised that the construction date has been set for June 17th from 8:30 a.m. to 3:00 p.m. Councilmember Murdock asked how an individual could help if they were not familiar with construction techniques. Councilmember Shea noted that there were all kinds of workers needed, such as those who could handle pick-ups and/or deliveries. Councilmember Plescow noted that people could help with feeding the workers, etc. Councilmembers Shea, Plescow and Murdock agreed to participate.

Town Administrator Schiro reported that he continued to work to solve the issues associated with the sewer back-up at Chris Turner's house on Federal Street, with most being resolved. He noted that Ms. Turner continued to experience problems with her furnace, which was operational but damaged. Mr. Schiro advised Council that Climatic has worked on the furnace; and, has recommended replacing it at a price of \$3,800. He recommended that the furnace be replaced; and, that the Town Attorney draft a release form. Councilmember Snyder asked that the Town explore the Town's infrastructure. Town Administrator Schiro confirmed that the Town was televising the lines. Vice Mayor Kirk expressed concern about setting a precedent; and, explained that she did not want the residents to believe that the Town would replace their systems if there was a problem. She noted that the Town could not afford to do so. Ms. Kirk recommended that the Town split the cost to replace the furnace with Ms. Turner; and, asked about the age of her existing unit. Councilmember Littleton asked how much of the unit would be replaced. Town Administrator Schiro confirmed they would replace the oil furnace in the basement. Councilmember Snyder suggested the staff secure the age of the existing unit. Vice Mayor Kirk reiterated her suggestion that the Town offer to split the cost. Councilmember Murdock asked whether Ms. Turner has suffered damages prior to this instance. She expressed her opinion that she has experienced two sewer back-ups. Town Administrator Schiro confirmed that she only received damage during the first back-up. Town Attorney Whiting expressed her opinion that the fact that something happened was not proof that the Town was not competently running its utility system; and, suggested that they were on a slippery slope. She advised that she was sorry that she was not brought into the case; and, suggested it should have been referred to the Virginia Municipal League. Town Administrator Schiro confirmed it was referred to the VML Insurance Program. Town Attorney Whiting suggested that she would not have gone further without some showing of fault upon the Town. Town Administrator Schiro reminded Council that Ms. Turner appeared before them; and, they instructed him to follow-up on the case. Town Attorney Whiting expressed concern regarding a customer request for forgiveness on their utility bill due to the quality of the water in Lovettsville. She advised that, in that instance, she noted that the water met the qualifications of the State; and, that they were operating within the regulations, with no fault on the part of the Town. Town Administrator Schiro noted that this was not the position previously taken by the Council. He reminded them that Ms. Turner experienced sewage in her kitchen and bedroom. Councilmember Snyder noted that this was caused by a problem that the Town was not previously aware of; and, was unable to manage. He reminded Council that the back-up was the result of very cold weather and inadequate flow in the sewer main that combined to inundate Ms. Turner's home with sewage. Vice Mayor Kirk asked whether there was a problem with the grease traps. Councilmember Snyder reminded Council that the Town did not currently require restaurants to utilize grease traps. Councilmember Murdock reminded the Council that they discussed whether to require the restaurants to install them; and, determined that it would be very expensive. Councilmember Snyder agreed that the timing was horrible to require such an expense; and, suggested that the Town do its best to determine what was causing the gravel, as well as other obstacles, in the line. Town Administrator Schiro confirmed the Town was pursuing this; and, noted that the ultimate answer was the installation of grease traps. He concurred that it would be a hardship for the restaurants. Councilmember Snyder noted the need to develop a plan that protected the Town; and, was doable for the restaurants. Councilmember Littleton asked what the Town was going to do with regard to Ms. Turner's furnace. Vice Mayor Kirk reiterated her suggestion that the Town

determine the age of the existing furnace. Town Administrator Schiro expressed his opinion that it was original to the house. Councilmember Murdock asked what the Town would do if the system were twenty years old. Vice Mayor Kirk suggested that the Town offer to pay a portion of the cost. Councilmember Shea recommended that the Council defer to the Town Attorney; and, advised that she believed the Town would take responsibility for a situation that it had no control over if it were to replace the furnace. She noted that there was no neglect on the part of the Town. Ms. Shea acknowledged that the grease traps were a problem; however, she noted that the Town had no indication that this would result in backflows into Ms. Turner's home. Councilmember Murdock asked about the specifics of what the Council discussed during the meeting; and, whether Ms. Turner was present. Vice Mayor Kirk expressed her opinion that the discussion occurred after the meeting ended. Town Administrator Schiro confirmed that Ms. Turner was present during the meeting; and, that the Council instructed him to do whatever he had to do to resolve the damages. He noted that it was fine if the Council wanted to change their position; however, he advised that this was not what they told Ms. Turner. Councilmembers Murdock and Plescow expressed their opinions that the Council could not change what it told Ms. Turner. Town Administrator Schiro expressed an understanding of the Town Attorney's position. He reminded Council that there were three properties involved in the sewer back-up; and, noted that VML covered the damages up to the point of the policy limit. Mr. Schiro noted that VML reviewed the claims and negotiated damages with the auto business and the adjacent building. He reiterated that VML's risk management office was involved in the case from the beginning; and, advised that Ms. Turner's damages exceeded the Town's policy limits. Mr. Schiro noted that the Town has cleaned the house and pulled the carpets. He explained that the sewage backed-up throughout the house, into the bedrooms and kitchen; and, advised that there was a lot of damage to the house. Councilmember Murdock reiterated her opinion that the Council could not change what it told Ms. Turner. Vice Mayor Kirk asked whether the damage occurred over a period of several days. Town Administrator Schiro confirmed that it occurred all at once; and, reiterated that the sewage backed into the house. Councilmember Shea asked that the Council review the meeting minutes; and, expressed her opinion that the motion to adjourn had already been made when Ms. Turner appeared before Council. She asked whether the discussion was included in the minutes. Town Clerk North confirmed that the discussion occurred on the record. Councilmember Shea advised that she knew Council expressed sorrow and encouraged the Town Administrator to work with her; however, she was not sure the Council committed to the installation of a new furnace. Councilmember Snyder confirmed it did not. Vice Mayor Kirk asked that the Town Clerk pull the minutes from the meeting; and, that the Town Administrator determine the age of the existing furnace. She noted that if the unit was forty years old, it would begin to experience problems. Councilmember Plescow suggested the Town ask Climatic whether the unit was regularly maintained. Councilmember Snyder expressed his opinion that the Town did not care about that. Councilmember Littleton asked whether Ms. Turner had homeowners insurance; and, whether it would cover the damages. Town Administrator Schiro confirmed that she did; and, noted that he met with the VML insurance adjustor and Ms. Turner's insurance agent. He advised that he did not know what occurred with her homeowners insurance; and, only knew what VML paid. Vice Mayor Kirk suggested that Ms. Turner may not have sought damages from her homeowners insurance as she may not have wanted her premiums to increase. Town Administrator Schiro reiterated that most of the issues have been resolved, with the furnace being the outstanding item. Vice Mayor Kirk reiterated her concerns about establishing a precedent. She further expressed concern that Ms. Turner could come back to the Town complaining about the new system if the Town were to install one. Town Administrator Schiro confirmed that a release would be necessary if the Town were to install the new furnace. Councilmember Littleton noted that an oil furnace did not contain much; and, noted that it consisted of a compressor and box, which could not be harmed. Councilmember Snyder noted that it consisted of a combustion changer, the heat exchanger and, if it were a forced air system, other components. Councilmember Littleton asked whether this was a forced air system. Town Administrator Schiro confirmed it was; and, noted that the sewage entered into the forced air

system. Councilmember Snyder noted that he replaced his unit six to eight years ago; and, suggested that \$3,800 was less than he paid. Vice Mayor Kirk asked that staff secure more information.

There being no further business, the Council moved to adjourn the meeting at 7:05p.m.

APPROVED:

Darlene Kirk, VICE MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk