



MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes
Thursday, January 14, 2010
Town Office, 10 W. Marshall Street
6:00 PM



PENDING APPROVAL

PRESENT:

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

STAFF:

Jerry M. Schiro, Town Administrator
Rhonda S. North, MMC, Town Clerk
Elizabeth D. Whiting, Town Attorney
David M. Beniamino, AICP, Town Planner
Cindy C. Pearson, Economic Development Coordinator
Debbie J. Wheeler, Town Treasurer

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting on Thursday, January 14, 2010 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 6:00 p.m. She led Council and those attending in the Pledge of Allegiance to the flag.

Mayor Davis asked for a brief moment of silence in recognition of those suffering as a result of the earthquake in Haiti. She noted that given the sadness associated with this disaster, nations around the world have shown their love. Ms. Davis asked why countries fight when they have the ability to come together in times such as these. Councilmember Murdock encouraged citizens to make a ten dollar contribution toward Haiti disaster relief by texting 90999 and typing the word “Haiti”; and, noted that one hundred percent of these funds would go toward the American Red Cross. She suggested that if everyone texted, this would show the numbers of Americans who have donated. Ms. Murdock advised that during lunch today, officials with the local Red Cross Chapter announced that they have received more donations for Haiti than they did for Hurricane Katrina efforts.

Mayor Davis wished the citizenry a Happy New Year. She thanked the Town Administrator, Street Superintendent, Police Chief and Police Officers for their snow removal efforts the week before Christmas; and, noted that many worked around the clock, with the police officers having spent the night in Town. Ms. Davis advised Council that there was no snow in the parking spaces when the businesses re-opened on that Monday. Town Administrator Schiro commended Street Superintendent Simms, Chief Webber and the police officers for their hard work.

Public Comment

DeeDee Hubbard announced that she was pulling Project Helping Hand off the shelf in order to provide disaster assistance for Haiti; and, advised that they would hold an event on February 26th at the Community Center. She advised that she had been in contact with officials from INOVA Fairfax Children’s Hospital and the Community Coalition for Haiti; and, noted that INOVA had

already sent doctors. Ms. Hubbard advised that Project Helping Hand would funnel whatever money it raised through them. She noted that they would keep the entry fee down so this event could be a community effort; and, advised that it would be similar to what had been done in the past. Ms. Hubbard announced that Robert Duvall, Charles Mann, Darryl Green and Art Monk have become involved with this group. Councilmember Murdock asked how the money was raised during the last event. Ms. Hubbard advised the Council that they raised \$20,000 from the auction during the event for Hurricane Katrina even though only forty people were present; and, explained that they had some good auction items. Councilmember Murdock noted the need to donate auction items. Ms. Hubbard announced that they would play on the table cloth theme; and, noted that she would get the celebrities to participate, as well as individuals from the community. She advised that a representative would be available during the Volunteer Fair this coming weekend to advertise this event.

Mary Jo Jackson, of the Middleburg Community Center's Board of Directors, thanked the Council for their donation. She noted that they planned to work hard to be a bigger part of Middleburg; and, to be a more important part of its activities. Ms. Jackson expressed her opinion that the Community Center was the best kept property in town; and, noted that it contained fields and four floors for activities. She advised that they were here to help the Town; and, wanted to work with it. Ms. Jackson noted that they were trying to get more free activities; and, reminded Council that last summer they held a three-part Doc Shaffer series that was free to the public. She expressed her opinion that this event should have had greater attendance. Ms. Jackson invited the Council to tour their facility; and, noted that the tour could be done at once or individually. She reminded them that the Community Center was not owned by the County, but rather was owned by a charitable group. Ms. Jackson noted that they did rent space to the County Parks & Recreation Department; and, expressed her opinion that the Department was in trouble as it recently had to let some of its employees go due to low enrollment. She advised that she had not heard that they would cancel the Middleburg program or reduce the rent paid; however, she noted that they must do something to continue. Ms. Jackson reiterated her invitation for the Council to tour the facilities. Vice Mayor Kirk agreed the Council should do so. Councilmember Snyder suggested it be coordinated through the Town Clerk.

Special Recognitions

Mayor Davis noted that the Council passed a Resolution of Appreciation for the Christmas in Middleburg Committee last month, which she read. She presented copies of the signed resolution to Reggie Dawson and Dee Dee Hubbard, Co-Chairs of the Committee; and, noted that they spent many hours throughout the year preparing for this event. Ms. Davis expressed the Town's appreciation for everyone's work; and, noted that this year's event was more challenging than in the past due to the snow. She suggested that everyone handled the challenge well.

Approval of Minutes

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the December 10, 2009 Regular Meeting minutes as amended.

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)

Staff Reports

Town Administrator Schiro thanked for the Mayor for her compliments related to the snow removal efforts; and, noted that his written report included the cost for this event. He advised that the Town spent three years worth of its snow removal budget thus far. Mr. Schiro explained that because the snow occurred during the week of Christmas, the staff tried its best to do what it could to open the streets so the merchants would not lose money. He noted that the Town was lucky to get a contractor in; and, suggested it was money well spent. Mr. Schiro expressed hope that these efforts mitigated the businesses' losses. Councilmember Snyder asked whether the Town could scramble again if another snow storm occurred. Town Administrator Schiro confirmed it could. Mayor Davis noted that the crews would not normally have worked so much overtime; however, they did so due to the timing of the storm. Vice Mayor Kirk noted that the Town has had to physically remove the snow from the parking spaces in the past. Mayor Davis advised Council that the crews worked around the clock for thirty-six hours. Councilmember Snyder noted that he received compliments early Monday morning on the removal efforts. Town Administrator Schiro concurred that the efforts were successful. He noted that he has made additional contacts with snow removal contractors in case they were needed. Mr. Schiro reminded Council that the Town advertised for a contractor, with no responses received. He explained that large companies have large clients; and, they would not take a relatively small job such as this one.

Town Administrator Schiro reported that the remainder of his written report was related to updates on the Salamander projects. He noted that they were still looking at a substantial completion date of March for the wastewater treatment plant and later on the water treatment plant. Mr. Schiro advised Council that the Town had a parking issue on Pendleton Street at the entrance to the Salamander property; and, explained that access to the street was blocked. He reported that the staff met with both the residents and a representative from Salamander Hospitality; and, installed temporary no parking signs. Mr. Schiro noted that the plan was to install permanent ones, as well as signage at the intersection alerting motorists that this was a private street at this time. He reported that the Town experienced another sewer back-up on Federal Street; and, advised that it was caught before any damage occurred. Mr. Schiro noted that he had the Town of Purcellville bring in the jet truck to ensure the line was open; and, confirmed it was. He reiterated that there was no property damage; and, that the back-up was caught at the clean-out. Councilmember Snyder asked whether the back-up was caused by grease or gravel. Town Administrator Schiro confirmed that both were found in the line; however, it was primarily grease. He noted that this back-up was not as bad as the last one; however, it was a problem that must be addressed. Councilmember Snyder suggested the Council may need to look at a grease trap ordinance; and, include a generous date for their installation. Councilmember Patterson asked who drained into the Federal Street line. Town Administrator Schiro confirmed that it was catching a lot of waste from Washington Street. He noted that the location of the back-up was a low point in the line. Mr. Schiro reported that he and the Mayor attended an Association of Northern Virginia Towns meeting earlier in the day, at which time they discussed budget issues. He noted that all localities were in the same situation in terms of forecasts, which was gloomy. Mr. Schiro reported that from what he was hearing, the commercial property assessments were down; however, the residential assessments were stabilizing. He noted that the Town could also expect that the 599 Police Funds from the State would be reduced. Mr. Schiro advised Council that he spoke with the new County Administrator earlier in the day; and, noted that he suggested the County would probably be looking at cuts in the Parks & Recreation Department as well as reduced hours at the library. He reported that the County's budget was in dire straits. Mr. Schiro suggested that the budget challenges were not just local, but were everywhere.

Mayor Davis expressed her opinion that it was a quiet month from a police perspective. Town Administrator Schiro reported that they had received a breaking and entering complaint, which they were handling.

Economic Development Coordinator Pearson reported that the ABA Hidden Treasurers FAM Tour went well. She noted that Rick Stoutamyer provided the bus tour operators with a history of Middleburg and a tour of the National Sporting Library. Ms. Pearson reported that they also met with representatives from Salamander Hospitality. She advised that they cut the tour short so they could shop; and, had an hour to do so before having lunch at the Red Fox Inn. Ms. Pearson advised that she would meet with them again at the end of the week at Mount Vernon. She reported that these tour operators had never been to Middleburg before.

Vice Mayor Kirk asked whether the Town Planner talked with the Streetscape Committee about the water treatment plant property and the extra plantings. Town Planner Beniamino advised Council that he was working with Salamander; and, hoped they would develop a new plan with more plantings that could be reviewed by the Streetscape Committee during their February meeting. He explained that he would prefer that the extra plantings come from them before the Town spent its own money.

Town Treasurer Wheeler noted that the charts in her written report showed that revenues were down, with the exception of one category. Councilmember Murdock noted that the meals tax for December was only down by \$600; and, advised that she expected it to be lower. Councilmember Patterson confirmed that December's figures were equal to last year's despite the losses during the Christmas in Middleburg event and the week before Christmas. She suggested that otherwise, those figures would have been better. Ms. Patterson expressed her opinion that the Town would see a different story in February due to the loss of the Coach Stop Restaurant. Councilmember Plescow noted that a lot of customers showed up once the Coach Stop announced they were closing. Councilmember Snyder expressed hope that someone would re-open the restaurant. Councilmember Snyder noted that the Water/Sewer Fund revenue looked miniscule compared to expenses. He asked whether he was misreading this report. Town Administrator Schiro asked whether the latest billing was included in the report. Town Treasurer Wheeler reported that the billing just went out earlier in the day. Councilmember Snyder expressed hope that this fund would improve; however, he suggested the need to take a hard look at it in the coming budget. Town Administrator Schiro reminded Council of the additional expenses associated with the new treatment plants. Councilmember Snyder noted the need to look at the mid-year figures; and, to incorporate any findings into the next budget.

Reports of Town Committees

Go Green

Jil Brunett, Co-Chair of the Go Green Committee, appeared before Council to report on the status of their research into street lighting. She reported that Chris Walker, who was associated with Dark Sky International, was working with them; and, has provided mapping software for their use. Ms. Brunett advised that the members of Go Green have been asked to identify all of the lights on the buildings in Town; and, to note what they liked and did not. She reported that they intended to ask the shop owners to transfer their lighting to LED lights that would light the sidewalks. Ms. Brunett further reported that they were looking at getting rid of the street lights; and, instead using lower aerial lighting. She explained that the elderly could not do facial recognition because of an excess of light; and, noted that they were looking for lighting that would make it easier for them to do so. Ms. Brunett advised Council that they were a month behind schedule due to the weather; and, noted that it was too cold to do the inventory. She expressed hope to have a first draft of their lighting plan in a month or two.

Councilmember Murdock asked about the Go Green cloth bags that she saw in the Council Chambers earlier in the week. Economic Development Coordinator Pearson reported that those bags were for the bus tour; and, came from American Water Resources several years ago when the Go Green Committee did a fluorescent light bulb distribution. Councilmember Murdock noted that she had a cloth bag from Maine; and, suggested the Town should implement a program of bags with foxes on them that could be sold in every store and restaurant. Mayor Davis noted that some stores already have the canvas bags; and, advised that the Fun Shop was getting some as well. Ms. Brunett confirmed that Go Green did not currently have the bags; although, they had them in the past. She advised that they could look at them again. Councilmember Murdock suggested that residents needed to be encouraged to use them when shopping.

Councilmember Shea asked whether Go Green was looking at the entire town or just the downtown area from a dark sky perspective. Ms. Brunett confirmed they were looking at the entire town, including the parking lots off the main street and the residential sections of town. Councilmember Snyder suggested they could do a driving tour in the Ridgeview Subdivision. Ms. Brunett confirmed the need for a street lighting map of the town. Councilmember Murdock noted that the light on her street was very bright. Councilmember Snyder confirmed that all of the street lights in Ridgeview were like that. Ms. Brunett suggested the need to drop them lower so the light would not shine in windows. She noted that the Town also had issues with the Christmas decorations; and, advised that they were looking at a pole that would allow them to be displayed above the light. Vice Mayor Kirk noted that some of the houses in Ridgeview had outdoor lights that shine in their neighbors' windows. Councilmember Snyder suggested that Go Green look at what could be done to encourage those residents to change their lights. Vice Mayor Kirk noted that for those that were motion activated, when the wind blew, they came on and stayed on for a period of time. Councilmember Murdock suggested the homeowners be encouraged to go green with their lighting. She asked whether Go Green was exploring options to pay for this program. Ms. Murdock further asked whether they were exploring grant money. Ms. Brunett confirmed that Go Green had not looked at the money piece, nor have they looked at the fixtures. She explained that they were just looking at the lighting at this point. Ms. Brunett confirmed that they have done no fundraising; although, she noted that the Beautification Committee had raised \$30,000 for new light poles. She suggested that if the large poles were not needed, there may be a way to use some of that money for the light fixtures. Ms. Brunett reiterated that they have not looked at the finances. Councilmember Shea suggested that the Town needed a lighting plan before it could go after grants. Vice Mayor Kirk expressed her opinion that the Town Clerk had looked at some grants. Town Clerk North confirmed that the staff submitted an application for an Energy Efficient Block Grant to do a pilot program with Dominion Power. She reminded Council that this pilot program consisted of changing over ten existing lights to LED lights; and, noted that the Town would provide the fixtures, with Dominion Power providing the manpower and testing resources. Ms. North advised Council that she checked on the status of this grant earlier in the week; and, while no word had come on the status of the awards, the Northern Virginia Regional Planning Commission was hopeful since very few questions had been asked about the applications. Councilmember Shea asked whether Go Green worked with the Town Clerk on the development of the grant application. Ms. Brunett confirmed that Rebecca Poston, one of the Co-Chairs of Go Green, attended a meeting. She noted that she would like to coordinate further with the Town Clerk; and, advised that the grant happened outside of Go Green's efforts, which was fine as the Town needed to get as much money as possible for this effort. Ms. Brunett advised Council that there needed to be a discussion about dropping the lights on the poles before Dominion mounted the lights. Ms. Brunett expressed hope that the grant process was not out of phase with Go Green, as they would like to drop the lights on the poles. She noted that the Town Clerk had indicated that there was a limit on the type of fixtures that could be used. Town Clerk North confirmed that Ms. Poston did attend a meeting with her at the Planning District Commission; following which they agreed that applying for a

grant to participate in Dominion Power’s LED Street Light Pilot Program was the best course of action at that time. She advised that based upon this, she submitted the grant application; however, she explained that she had not been in further contact with her because there was nothing to report on the grant. Ms. North noted that she spoke with Ms. Brunett earlier in the week; and, was aware that they were interested in dropping the lights. She advised that she was aware that if the grant was received, she needed to coordinate with the members of Go Green and to make sure that everyone was involved.

Action Items (non-public hearing related) –

Council Approval – Right-of-Way Agreement – Wastewater Treatment Plant – Virginia Electric and Power Company

Town Administrator Schiro expressed his opinion that the plat told the entire story; and, explained that the right-of-way needed to be extended in order to get power to the new wastewater treatment plant. He reported that the Town Attorney reviewed the agreement and found it to be satisfactory. Town Attorney Whiting confirmed that she did not have to make any changes to the document. She noted that in the past, Dominion would reserve the right to sub-let to other providers; however, they did not do so in this agreement.

Councilmember Snyder moved, seconded by Councilmember Shea, that Council authorize the Town Administrator to sign a Right-of-Way Agreement between the Town and Virginia Electric and Power Company for the purpose of extending power to the Town’s wastewater treatment plant located at 500 East Washington Street.

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)

Council Approval – Professional Services Agreement – Stantec Consulting Services

Town Administrator Schiro explained that the Town entered into a two year agreement in 2008 with Stantec for general engineering services. He confirmed that the agreement before Council was for such services to be provided to the Town. Mr. Schiro noted that there was originally some language in the document that the Town Attorney did not agree with; and, it was removed. He reported that the rate schedule did not increase substantially; and, advised that the rate for Phil DeLeon only increased by \$2/hour. Mr. Schiro reminded Council that these services were provided on an as-needed basis; and, noted that Stantec did submit a proposal for each project. He advised that the Town Attorney has reviewed and approved the agreement.

Councilmember Snyder moved, seconded by Councilmember Littleton, that Council authorize the Town Administrator to sign a Professional Services Agreement with Stantec Consulting Services, Inc. for the provision of professional surveying, planning and engineering services.

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)

Discussion Items

Planning Commission Recommendation – Draft fee-in-lieu-of-sidewalk ordinance

Town Planner Beniamino reported that the Planning Commission met earlier in the week to finalize their recommendation on this issue. He reminded Council that in March, they tabled a request from the National Sporting Library for a sidewalk waiver and asked the Planning Commission to look at a fee-in-lieu-of ordinance that mimicked the parking one. Mr. Beniamino noted that he asked the Town Clerk to forward Council the draft version of the draft Commission's meeting minutes in case they had any questions.

Town Planner Beniamino advised Council that the Planning Commission recommended a new section to the zoning ordinance that mimicked the parking section. He read the draft ordinance language. Mr. Beniamino explained that the waiver would run with the land; and, would not expire. He further explained that after an applicant paid the waiver fee, if he were to propose new construction that required new sidewalk, he would still have to meet that sidewalk requirement. Mr. Beniamino noted that the fee revenue was proposed to be used for the construction or maintenance of sidewalk; and, advised that there was some discussion at the Planning Commission level regarding the issue of repairs. He explained that in talking with the Town Administrator, while the Town wanted to focus on acquiring and developing new sidewalk, they were concerned that it would not help to build new ones if the Town could not take care of what already existed. Mr. Beniamino noted that under the draft ordinance, the Council would direct where the funds would go; and, suggested that if there was no new construction in a year, the money could possibly be used for repairs. He advised Council that the draft ordinance identified the hardship conditions under which a waiver could be granted, including (1) where there was lack of sufficient right-of-way; (2) an impact on a historical or other contributing non-historic structure as deemed appropriate by the HDRC; and (3) a public safety concern. Mr. Beniamino advised that the Planning Commission discussed buildings that were non-contributing to the Historic District but were "Middleburg" in nature. He suggested the HDRC would say these buildings would not look the same if they were demolished and replaced; and, expressed his opinion that a lot of buildings on Federal Street would fall into that category. Mr. Beniamino noted that the ordinance provided for HDRC review if needed; and, advised that not all of the requests would go before them. He explained that the draft ordinance reduced the process in that it allowed the staff to determine if a request needed HDRC review.

Vice Mayor Kirk expressed concern that the language, as written, only allowed the Council to act on the request if approval came from these boards. Councilmember Snyder expressed his opinion that the Council would ask for their recommendation and then act upon the request, regardless of the recommendation. Town Planner Beniamino confirmed that, under the draft ordinance, the Council must send the request to the Planning Commission, and possibly the HDRC, for their input. He noted that a deadline could always be attached to the request for a recommendation. Mr. Beniamino explained that the Planning Commission felt that since this item involved public infrastructure, it was their job to make a recommendation. Councilmember Snyder expressed his opinion that the recommendation did not tie the Council's hands. Councilmember Shea expressed her opinion that as written, the word "only" seemed to tie the Council's hands. Town Attorney Whiting explained that it set a threshold in terms of when the Council could act; however, it did not constrain them from making a decision. She noted the potential for a problem if a member of a body boycotted a meeting in order to create a quorum issue. Ms. Whiting suggested the Council could set a deadline for both bodies to make a recommendation. She noted that this item was not governed by a State mandate; and, opined that the Council was free to say that if the body(s) had not made a recommendation by the deadline, they would have been deemed to have consented to the request. Vice Mayor Kirk advised Council that she did not like

the wording for Section “D”. Councilmember Shea asked whether anything would be lost by deleting the word “only”; and, recommended that the wording be changed to read “They shall be approved by the Middleburg Town Council once a recommendation is forwarded to them by the Planning Commission”. Councilmember Snyder expressed his opinion that it would not make a difference. He reminded Council that it was their job to make a decision on the waiver; and, noted that the Council could give a body xxx amount of time to make a recommendation and then act. Town Planner Beniamino noted that this was just word-smithing; and, expressed his opinion that the Planning Commission did not look at the language in that way. He advised that he would have no problem changing it; and, noted that he simply wrote the ordinance to mimic the existing parking fee language. Councilmember Patterson confirmed that the Planning Commission did not discuss that sentence. Town Attorney Whiting suggested that if the Council eliminated the word “only” that they also turn the word “shall” to “may”. She reiterated that the word “only” did not particularly add to the ordinance.

Town Planner Beniamino read the language in Section “D” of the draft ordinance, which addressed the dedication of right-of-way. He advised that the Commission went back to the initial discussion of sidewalks to nowhere; and, explained that if the Council felt that a sidewalk was a hardship or there was a reason the Town would charge a fee, the Commission felt the Town should get as much right-of-way as possible from the applicant even if the construction of the sidewalk would not occur. Mr. Beniamino explained that in ten or twenty years, the Town may want to install sidewalk at this location; and, suggested it would want to get as much right-of-way as possible at this time. He noted that the Commission determined that seven and half feet of right-of-way was needed for a five-foot wide sidewalk; and, reiterated that the Town should secure as much right-of-way as possible. Mr. Beniamino explained that in twenty years, the improvements on the property may no longer exist and suggested that part of the waiver process be to secure the dedication of right-of-way. He noted that the Council could say it wanted the entire seven and a half feet or less. Mr. Beniamino further suggested that an encroachment easement could be used if something was in the way. Councilmember Snyder noted a concern about possibly restricting tree plantings. Town Planner Beniamino confirmed this could be discussed further.

Town Planner Beniamino advised that in addition to the zoning ordinance amendments, amendments were also needed for the subdivision and site plan ordinance. He read the proposed language.

Town Planner Beniamino advised Council that the Planning Commission has recommended a fee schedule; and, explained that they reviewed several examples of potential sidewalks in the town, including an easy, medium and difficult installation, in order to determine their recommendation of \$400/linear foot. Vice Mayor Kirk expressed her opinion that this amount was high.

Town Planner Beniamino reported that, in addition, the Planning Commission also reviewed the fee for parking spaces; and, noted that the existing fee had been \$15,000 for approximately ten years. He explained that the Commission took the Liberty Street Parking Lot costs, which came to \$31,000/space with inflation; and, recommended an increase to \$30,000. Councilmember Snyder agreed that raising the parking fee may be appropriate. He expressed hesitation; and, suggested the Commission picked the most expensive example by using the Liberty Street Parking Lot to derive the costs, as the Town experienced issues with that project. Town Planner Beniamino confirmed that the utility costs were removed when determining the parking space cost. Vice Mayor Kirk expressed her opinion that both numbers seemed way high. Councilmember Snyder agreed that \$400/linear foot was out of this world; and, suggested the \$30,000 fee probably needed to be in the low \$20,000’s to high of \$30,000s.

Councilmember Patterson encouraged Council to read the minutes from the Planning Commission meeting; and, suggested the staff should have given Council the numbers they used to derive the sidewalk figure. She suggested that this would have made it easier for them to understand the \$400 figure. Ms. Patterson explained that the proposed fee was derived from three priority projects in Town; and, advised that one was to extend sidewalk past the elementary school (medium project), one was at the intersection of Jay and Federal Streets (easy project), and the last was at the intersection of Federal and Madison Streets (difficult project). She noted that in looking at the numbers, there was concern related to the right-of-way costs; and, advised that the school project was the cheapest in this regard. Ms. Patterson reiterated that the Town Engineer came up with the cost numbers after viewing project costs from appropriate places. She noted that he looked at the entire project costs, including the need for retaining walls, etc. Ms. Patterson advised that while Commissioner Hazard had the same initial response as Council regarding the numbers, they did work hard on them.

Councilmember Patterson advised that the Planning Commission also raised its eyebrows on the \$30,000/space fee; however, they decided after a long discussion to forward the number to Council for discussion since it was their decision. She noted that if the grant funds were removed from the Liberty Street lot costs, this reduced the cost to \$25,000/space. Ms. Patterson advised Council that all of the members of the Commission were in agreement that the \$15,000 fee did not pay for the Liberty Street Parking Lot. She noted that they discussed the fact that the Town did not have a parking plan, nor did it have an idea for the location of the next lot. Ms. Patterson shared their concern about setting the fee when the Town did not know the cost for land acquisition; and, noted that they were hesitant about recommending that number. She noted that there was also a lot of conversation by more than one member of the Commission on what was the public and private property owner's responsibilities. Ms. Patterson advised that since the Commission did not make that decision, they agreed it was up to the Council to determine where to draw that line.

Councilmember Snyder advised that he would like for the Commission to know that he would rather they send the Council a higher figure than a lower one; and, stricter conditions rather than lax ones. He noted that this was their job; and, it was the Council's job to take this information and put into something that would work.

Councilmember Patterson noted that the Planning Commission felt that what they sent to the Council was a starting point and it was something for the public that could be taken apart. She explained that they felt that they gave the Council enough to look at and make changes to if desired. Ms. Patterson advised Council that public safety was the Commission's first concern with regard to sidewalks, which was why they took so much time with that item. She noted that they viewed sidewalks as one of the most important things the Town could do; and, advised that their next step was to develop a sidewalk plan so the Town would have a sidewalk network identified. Ms. Patterson reminded Council that the fee did not make sense if the Town did not have a plan in place on where it wanted the sidewalks developed.

Vice Mayor Kirk expressed her opinion that this was a work in progress. She advised that she did not like the language in Section "D" as written; and, expressed her opinion that this would allow the Planning Commission and HDRC to drive the Council. Town Planner Beniamino stressed that the Council would always have the final say. Vice Mayor Kirk reiterated that she was uneasy with the language as proposed. She expressed her opinion that to double the fee for parking was a lot. Town Planner Beniamino suggested that these two items be taken separately. He advised that he did not expect Council to make a decision on this item during this meeting. Mr. Beniamino asked whether there were any other parts of the ordinance that they did not like. Vice Mayor Kirk expressed her opinion that Section "D" was written backwards; and, advised that she would e-mail her thoughts to the Town Planner.

Town Planner Beniamino asked the Council whether they had any concerns related to the three conditions under which a waiver could be granted. He noted that this section was needed so there would be standards. Vice Mayor Kirk expressed her opinion that this section was fine – it was the other part that was backward. She reiterated that she would get her thoughts together and share them with the staff. Town Planner Beniamino noted that the Planning Commission approved the idea; and, that he was open to changing the wording.

Councilmember Shea noted that Section “C” identified the repair of sidewalks and infrastructure in the commercial districts. She asked whether this would limit work on The Plains Road to those locations that had access to commercial properties, but were not really commercial. Town Planner Beniamino expressed his opinion that The Plains Road was commercial, depending on how far up the road one went. Councilmember Shea recommended this language be amended to say that the sidewalk would provide access to and from commercial properties. Vice Mayor Kirk concurred. Town Planner Beniamino expressed his opinion that this was related to past discussions on a corridor enhancement district, which brought people into the Historic District; therefore, they were important. Councilmember Shea expressed her opinion that the sidewalk in front of the elementary school would also be questionable unless the “to and from” language was included in the ordinance.

Councilmember Murdock noted that she had some passionate comments she would like to make. She thanked Councilmember Patterson for her explanation of the Planning Commission’s recommendation; and, noted that her comments had been written before hearing them or reading the Planning Commission meeting minutes. Ms. Murdock also thanked the Planning Commission for their hard work; and, noted that they were very dedicated, exceptional people. She noted that it was their job to think of the future of the town and to advise the Council on planning issues. Ms. Murdock further noted that it was the Council’s job to think of the town as a whole; and, to balance the different aspects of planning, history, charm, and what the town looked like today and would look like in the future. She reminded Council that this was a juggling act. Ms. Murdock advised that she did not want to see sidewalks everywhere in the town, as she did not want to feel as if she lived in a mini-city. She noted that she was not against sidewalk planning or developing a plan; however, she wanted to look at it carefully. Ms. Murdock advised that financially, this worried her. She noted that it was the Town’s responsibility to help businesses open and stay open; and, suggested that when the economy was down, it was not the time to scare away potential businesses. Ms. Murdock expressed her opinion that the economy would not change tomorrow; and, advised that she would hate to see Middleburg out-price itself due to the cost of sidewalks and parking. She advised that she also did not want small businesses to have trouble selling the business or for new owners to have to pay high fees. Ms. Murdock suggested these fees would start adding up; and, the business may locate elsewhere. She encouraged Council to proceed cautiously. Ms. Murdock noted that she was not against the proposal.

Councilmember Murdock advised that as to the National Sporting Library, she had a moral problem with the Town “dreaming” up a fee when the Library was half way into their building project. She reminded Council that they tabled the Library’s request on March 26, 2009. Ms. Murdock advised that, to her, to dream up a fee now smacked of the thought of “let’s sock it to the rich library to pay for sidewalks around town”. She expressed her opinion that no one wanted to see the historic walls at the National Sporting Library torn down. Ms. Murdock asked who wanted sidewalk on the south side of Route 50 when one already existed on the north side; and, suggested there was no point in having it on both sides. She reminded Council that the sidewalk on the Library’s site plan would meet ADA requirements; however, it would require the use of tall railings and the need to cut into the stone wall, which would be “dreadfully ugly”. Ms. Murdock advised Council that she would like to waive their sidewalk requirement completely.

She noted that while she has not been told so by the Library, she was confident they would install some type of trail on their property; and, suggested there was no reason they would not do so as they needed to get people to their facility as much as people needed to walk to it. Ms. Murdock expressed her opinion that this would also help the residents on Lincoln Road, as well as others. She noted that the National Sporting Library was a non-profit organization, not a money-making commercial entity. Ms. Murdock advised that a museum of the quality they would build would attract tourists, who would eat, sleep and shop in town. She asked why the Town would put a wall in front of the most promising museum that may ever be built in Middleburg. Ms. Murdock advised that she would like to bring the Library's request for a sidewalk waiver back to the next agenda, which would give the Council two weeks to a month to ask questions. She reported that she would ask for a total waiver; and, noted that she felt strongly about this. Ms. Murdock further noted that the Library was doing something for the Town; and, suggested the community would only profit by it.

Councilmember Shea noted that she did not disagree with Councilmember Murdock's statements; however, she advised that she must balance this with whether putting in the walkway through the National Sporting Library's property would help those on Lincoln Road. She reminded Council that by doing so, it would be asking the residents to wander, as opposed to having direct access to town. Ms. Shea expressed her opinion that the residents would not travel out of their way. She suggested this was a point to consider as well.

Town Planner Beniamino reminded Council that in lieu of the construction of a sidewalk, the Planning Commission approved a pedestrian path that went across the National Sporting Library's site. He advised that the path had to meet ADA standards; and, explained that given the grade of the hill, the Library would have to remove the stairs and create a meandering path. Mr. Beniamino further advised that this would result in the need for a retaining wall, as well as a three foot iron railing to protect individuals from falling. He noted that if a waiver were granted for the required public improvements, the Library could build a path on their own that would not have to comply with ADA standards. Councilmember Murdock asked whether it was correct that the Town could not make those arrangements, but rather the Library must install the path on their own. Town Planner Beniamino confirmed this was correct. He noted that they could say they would not do it. He advised that there was currently a path on the site that was not defined. Councilmember Shea advised Council that the path was simply made up of stepping stones. Town Planner Beniamino reiterated that the Library could install an all-weather path that meandered that would not have to meet ADA standards. Councilmember Shea asked whether the sidewalk must be installed around the National Sporting Library site or whether it could be placed on the other side of the street. Town Planner Beniamino noted that this option was raised by Councilmember Littleton; however, the Town had no mechanism in place to require it. He reminded Council that this was the purpose of the fee-in-lieu-of ordinance; and, noted that the idea was that it was better to get money for the waiver and use that money as a match for grants or to build them based on an actual sidewalk plan. Mr. Beniamino noted that building the sidewalk on the other side of the street may be the best location; however, he asked whether this was the first sidewalk concern for the Town. He further noted that he was not sure the Town could require its installation across the street since it was an off-site building requirement. Councilmember Shea asked whether it could be constructed across the street if the Town had a fee system in place. Town Planner Beniamino confirmed it could. He noted that the Town would get \$xxx from a fee; however, he suggested that if the Town secured an 80/20 grant, it could turn a \$100,000 fee into \$800,000 worth of pedestrian improvements. Vice Mayor Kirk asked how much the sidewalk fee would be for the National Sporting Library. Town Planner Beniamino confirmed it would be \$420,000 based upon the recommended \$400/foot fee.

Councilmember Murdock asked what Loudoun County charged as its sidewalk fee. Town Planner Beniamino explained that Loudoun County did not have a fee; however, it had a bonding format for capital projects. He explained that they charged \$65/linear foot for sidewalk as a part of that bonding format. Mr. Beniamino reminded them, however, that most of the land in the County was raw land, in open fields. He noted that this same fee also applied to some areas that were developed. Mr. Beniamino advised that \$65 was a low figure when working in a town.

Councilmember Murdock reiterated that the National Sporting Library had been waiting for ten months for an answer. She suggested that if the Council talked about a fee-in-lieu-of ordinance, the Town needed to get the language right and hold a public hearing. Town Planner Beniamino reminded Council that the ordinance would have to be sent back to the Planning Commission for a public hearing, with the Council also holding a public hearing. He noted that they could do so as a joint hearing to save time. Councilmember Murdock expressed her opinion that it was wrong to dream this up ten months later. Councilmember Patterson asked for the date when this item was officially forwarded to the Planning Commission. She further asked why it was not discussed in March. Town Planner Beniamino confirmed it was discussed by the Planning Commission in April; and, reminded Council that in July, the Commission made a recommendation to take away the ability to grant sidewalk waivers. He advised that this recommendation was presented by the Chairman to the Council in August, with the Council returning it to the Planning Commission. Mr. Beniamino further advised that in September, the Commission began to work on the fee ordinance.

Councilmember Patterson asked the Council why they asked the Planning Commission to look at the fee ordinance if they had concerns about deadlines. She suggested that the Council could have just waived the sidewalk in March. Ms. Patterson noted that the Planning Commission has been working on this item since April; and, reiterated her question as to why the Council would forward a request to them if it was just going to waive the sidewalk anyway. Councilmember Shea noted that she could not answer the question as she was not in the same place as Councilmember Murdock. She reminded Council that the sidewalk plan was an issue that had been around for a long time; and, advised that it was an issue she has wanted to address since she came on the Council. Ms. Shea expressed her opinion that regardless of whether the Council waived the National Sporting Library's sidewalk requirement, the Planning Commission had not wasted its time as the Town needed a sidewalk plan. Vice Mayor Kirk expressed her opinion that these two issues should have been kept separate. She agreed with the need for a fee ordinance.

Councilmember Patterson noted that the Council pushed a potential idea through – that being Councilmember Littleton's idea to place the sidewalk on the other side of the street. She further noted that the Commission was then asked to do something that was too tied to one project. Ms. Patterson advised that they were now in a situation that they have asked the Commission to do something and could not wait for an answer before they must act. She expressed her opinion that it was unfortunate in that the Council put a hard working Planning Commission through this exercise. Councilmember Murdock expressed her opinion that the ordinance could still pass; therefore, it would not be a wasted effort. Councilmember Patterson expressed her opinion that their efforts would be diminished if the National Sporting Library's sidewalk installation requirement was waived. Councilmember Murdock expressed her opinion that this was all about money. Councilmember Shea noted that it was not to her. Councilmember Patterson noted that this was not about money to the Planning Commission. Councilmember Littleton advised that this was where the Council currently was; and, noted that they must go forward. He suggested the need to address the National Sporting Library's request. Mr. Littleton reminded Council that Middleburg was hurting; and, advised that he was all for anything that could help the Town get more people into Middleburg to buy. He reminded Council that the National Sporting Library was a non-profit organization that did not make money; and, only helped the Town. Mr. Littleton advised that he did not see why this was a big issue for anyone since the Library was

helping the Town. He noted that the stone wall was historic; and, suggested it would be a travesty to tear it down on Washington Street and The Plains Road. Mr. Littleton reminded Council that the wall had been in existence for a long time; and, noted that the Library site had a lot of history. He expressed his opinion that the Library would construct an all-weather path as they wanted to get along with the Town. Mr. Littleton suggested that no one had wasted their time; and, noted that the Commission had explained what they felt was necessary not for the Library, but for the commercial area. He expressed his opinion that the Library was not a commercial site; and, noted that it was a museum site, containing a public use. Mr. Littleton reiterated that they did not raise or make money. He expressed his opinion that the Council should waive the sidewalk in order to keep the Library's site looking as it currently did. He noted that he could not see asking them to pay \$400,000 for sidewalk that would go nowhere.

Councilmember Snyder suggested that Council continue this discussion at the work session; and, that they talk about the options to waive the sidewalk requirements for the National Sporting Library as one agenda item and the sidewalk and parking fees as another. He further suggested that the Council talk about each item on its own merit. Councilmember Murdock suggested that the parking and sidewalk fee discussions should be held separately. Mayor Davis asked that an item be placed on the next work session agenda so the Council could make a decision on the National Sporting Library's waiver request. She noted that this would allow them to have an answer within two weeks. Town Planner Beniamino advised Council that he would e-mail them the work sheets the Planning Commission used to determine the sidewalk fee recommendation. He noted that they could be confusing to look at; and, encouraged Council to contact him if they had any questions. Vice Mayor Kirk suggested the Town Engineer be present for the next meeting. Councilmember Patterson suggested that if the main focus was the waiver for the Library, the Council may want to hold the rest of the discussion at a second work session. She noted that if this were the case, the Town Engineer would not need to be at the next meeting. Town Planner Beniamino reminded Council that it was Councilmember Littleton's idea to build the sidewalk across the street, which everyone seemed to like. He noted, however, that only a portion could be built as some of this had already been waived for the Vinegar Hill Project. Mr. Beniamino reminded Council that it was his suggestion to draft a fee ordinance that would allow the Town to accept funds and determine at a later time the best location in which to use them through the implementation of a sidewalk plan. Councilmember Snyder recommended the Council look at the materials from the Planning Commission and their meeting minutes before making a decision on whether to keep this discussion on the next agenda or defer it to a later meeting. He suggested the Town Engineer did not need to be present; and, noted that if it was found that he did, the Council could always defer the discussion to another meeting.

Vice Mayor Kirk assumed the role of chair of the meeting.

Request to vacate Pickering Street right-of-way – Fun Shop

Town Planner Beniamino reminded Council that they asked the staff to have the Pickering Street right-of-way behind the Southern States building appraised; and, advised that the sixty-two page report had been received. He reported that the appraised value was \$61,000 for the forty by one hundred seventy foot wide right-of-way. Councilmember Murdock expressed her opinion that this was a huge amount of money, especially in this economy. Councilmember Littleton agreed. Town Planner Beniamino explained that all of the surrounding property was zoned C-2 Commercial; and, because the C-2 District allowed for zero lot lines, the appraiser felt this was a building lot. He expressed his opinion that a lot of work would have to be done to make it a building lot, including grade changes and the development of access to Federal Street. Mr. Beniamino confirmed, however, that under the zoning ordinance, it could be a building lot, which was the basis for the appraisal.

Councilmember Murdock asked about the price of the right-of-way in this same area that was previously sold. Town Planner Beniamino confirmed that Tim Dimos bought the front portion of this right-of-way for \$14,000 in 1985; and, suggested that it was significantly more valuable due to its location. He reminded Council that it was the current location of the Southern States building. Mr. Beniamino suggested that if one were to look back on Federal Street, there was nothing back there; and, noted that any building would have to be built up on the hill. He suggested that there was a question related to sidewalk access; and, noted that customers would have to climb a hill to access the property. Mr. Beniamino noted that while the appraiser understood that it was a difficult site to develop, under the Town's ordinance, it could be developed as a building lot.

Councilmember Murdock asked whether the appraiser was aware of the Dimos purchase. Town Planner Beniamino confirmed she was. Councilmember Murdock asked whether she considered that in conducting her appraisal. Town Planner Beniamino explained that she used appraisal formulas in determining the value. Councilmember Snyder expressed his opinion that it sounded as if the property was appraised as a vacant lot fronting Washington Street. He asked the Council how they wished to proceed; and, whether they wanted to solicit an offer for the property.

Town Attorney Whiting advised Council that what they were proposing was to extinguish an easement; and, noted that she could not tell if the appraiser knew whether this was an easement and not fee simple property. Town Planner Beniamino expressed his opinion that she had a difficult time as there was no plat for the property and no identification on the Loudoun County Tax Maps to assist. Town Attorney Whiting advised Council that land acquisition and disposition of real property did not follow normal procurement rules as land was considered to be unique. She advised that with the old platted roads being easements overlaying the underlying fee simple, the only thing someone not touching the property could get from the Town was the right to harass the person next door. Ms. Whiting reiterated that the Council would be simply extinguishing the easement; therefore, the Town would be basically offering to convey the right to harass the abutting owners. She reminded Council that when the Town conveyed Independence Street to F&M Bank of Winchester, it did so by quit claiming all interest. Ms. Whiting advised that Mr. Dimos got a better deed than this; however, she would not recommend that in this case. She suggested that the Town simply extinguish its rights in the property and convey those rights to the purchaser. Ms. Whiting noted that the Fun Shop owned the property on both sides of the right-of-way; therefore, the Town had a market of one. She expressed her opinion that this was not a procurement situation; and, suggested it was what a willing purchaser was willing to pay that meant enough to the Town that it was willing to extinguish its public rights. Ms. Whiting expressed her opinion that this was not worth \$61,000 due to the constrained market. She suggested the Town's rights be conveyed to someone with an underlying fee ownership; and, reiterated that there was only one person to choose from since the same entity owned both sides. Town Planner Beniamino advised Council that there were actually three sides to the right-of-way, with one being owned by Mr. Dimos. Town Attorney Whiting advised Council that Mr. Dimos could technically make an offer on the property. She suggested that following the subdivision statutes on a vacation, one must start with a presumption that each adjoining property owner contributed to the property at the center line of the right-of-way. Ms. Whiting advised that in old cases, a municipality could have recorded a plat putting the property line at the edge of the public roadway, even though the abutting lot owned to the center line. She explained that what was effectively recorded was an overlaying of fee simple land with an easement that the public controlled. Ms. Whiting suggested the Council would be ignoring that general construction that presumed that each side contributed. She explained that she was not saying the Town could not do this; however, she suggested that a quit claim deed be signed with the two adjoining property owners fighting for ownership. Ms. Whiting suggested the bottom line was that if there was a purchaser that was willing to offer the Town a price it thought was fair, the Town was free to contract with that purchaser and convey the easement.

Councilmember Snyder asked whether this would be done by quit claim deed. Town Attorney Whiting confirmed it would, with no warranties.

Vice Mayor Kirk asked the Council what they wished to do next. Councilmember Littleton suggested they wait for an offer. Councilmember Snyder agreed. Vice Mayor Kirk asked whether the Town had to advertise for offers. Town Attorney Whiting advised Council that they must hold a public hearing before they could dispose of the Town's interest in the land. She expressed her opinion that there was only one advertisement required to give notice of the public hearing. Town Planner Beniamino suggested the Council wait for the offer and then determine if they wanted to accept it. Town Attorney Whiting confirmed that they could not do so as they could only provisionally accept the offer contingent upon the public hearing. Councilmember Snyder suggested the Council hold a public hearing at their next regular meeting. He further suggested that it be scheduled for hearing; and, removed if no offer was received. Councilmember Murdock asked whether there was a reason to rush. Town Planner Beniamino noted that this was a question for the applicant. Councilmember Murdock suggested the Council table further discussion of this item and think about it again in two weeks. Town Planner Beniamino noted that he had not heard from the Fun Shop that they had a pressing need for the property. He suggested that he speak with the applicant to see if they would like to make an offer.

Mayor Davis resumed as chair of the meeting.

Information Items

Councilmember Shea reported that the Volunteer Fair would be held on January 16th. She noted that she sent an e-mail to Council asking that they be there; however, she received no response to date. Councilmember Murdock noted that she was waiting to hear about something on her schedule; however, she would be there to help man the Town space. Councilmember Shea reported that the Pink Box and Farmers Market Committees would be included on the Town's table this year. She further reported that they have about thirty people who have said they would come to be represented. Ms. Shea advised that a mailing went out to all the post office boxes in Middleburg today. Councilmember Murdock asked what came of last year's event. Councilmember Shea reported that Middleburg FISH and Seven Loaves said they got volunteers as a result. She noted, however, that she heard from some individuals who signed up as volunteers that only received one call. Ms. Shea advised Council that she found someone to organize this year's event; and, who would continue to monitor the volunteering efforts throughout the year. She noted that she planned to request that the Community Center be involved in this event in the future; and, suggested the Council may receive a request for funding. Mayor Davis asked whether the event was advertised in the local newspapers. Councilmember Shea confirmed that she missed the deadline; however, flyers were distributed around town, in addition to the mass mailing. She noted that they had an e-mail list; however, they were shut down due to spam issues. Ms. Shea explained that, as a result, a lot of the work was done by telephone. Jil Brunett advised Council that the Pink Box reported that they secured two docents as a result of last year's fair.

Mayor Davis advised Council that she received a call from Billie Van Pay earlier in the day alerting her to the School Board's budget meeting scheduled for January 19th; and, asking that members of the Council and public attend. She reported that this meeting would occur at 6:30 p.m. in the School Administration building in Ashburn. Ms. Davis noted that if anyone was interested in supporting Middleburg Elementary School, they must call in advance to register for the speakers list.

Vice Mayor Kirk reported that she received a thank you letter from the Middleburg Library for the Town's Health Center Fund donation.

Mayor Davis noted that library and school funding were all issues that were forthcoming. Councilmember Snyder reminded Council that the General Assembly was meeting in Richmond to address the State budget; and, noted that this could have an effect on localities' budgets.

Closed Session – Property Acquisition, Consultation with Legal Counsel & Contract Negotiations

Councilmember Murdock moved, seconded by Councilmember Plescow, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(3), (7) and (29) to discuss the acquisition of real property for a public purpose; consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel; and, to discuss the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms and scope of such contract, where discussion in open session would adversely affect the bargaining position or negotiating strategy of the public body. Councilmember Murdock further moved, seconded by Councilmember Plescow, that this discussion be limited to the acquisition of property and contract negotiations regarding operational funding for the water and wastewater treatment facilities. Councilmember Murdock further moved, seconded by Councilmember Plescow, that the Council thereafter reconvene in open session for action as appropriate.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Mayor Davis asked the members of Council to certify that to the best of each member's knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting, which they so did.

There being no further business, a motion was made to adjourn the meeting at 8:11 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk