



**MIDDLEBURG TOWN COUNCIL
REGULAR WORK SESSION MINUTES
Monday, March 7, 2011**



PENDING APPROVAL

PRESENT: Mayor Betsy A. Davis
Vice Mayor C. Darlene Kirk
Councilmember Trowbridge Littleton
Councilmember Catherine “Bundles” Murdock
Councilmember Kathy Jo Shea
Councilmember Mark T. Snyder

STAFF: Martha Mason Semmes, Town Administrator
Rhonda S. North, MMC, Town Clerk
David M. Beniamino, AICP, Town Planner
Cindy C. Pearson, Economic Development Coordinator

ABSENT: Councilmember Kevin Hazard
Councilmember David B. Stewart

The Town Council of the Town of Middleburg, Virginia held their regular monthly work session on Monday, March 7, 2011 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 8:00 a.m.

Council Approval – Bond Reduction for Wastewater Treatment Plant and Bond Extension for Water Treatment Plant – Salamander Development, LLC

Town Administrator Semmes advised Council that the Town held two letters of credit – one for the water treatment plant and one for the wastewater treatment plant – which expired on March 10, 2011. She reported that Salamander has proposed a ninety day extension of the bond for the water treatment plant, which the staff supported. Ms. Semmes noted that the Town Attorney was not aware that this was an extension request; and, expressed her opinion that she would be fine with it.

Town Planner Beniamino noted that the Town was dealing with Salamander on three bond requests. He advised that, last week, they went through the process to get a new bond in place for the resort. Mr. Beniamino suggested the water treatment plant bond was the least of the Town’s concerns as it was just an extension of the existing bond.

Town Administrator Semmes advised Council that she received comments last week from the Health Department based upon their latest walk through of the facility. She noted that they raised some items which Loudoun Water was working on; and, others that the contractor was working to correct. Ms. Semmes advised that the staff was recommending approval of the ninety-day bond extension.

Town Administrator Semmes advised that as to the wastewater treatment plant bond, she had some concerns. She noted that Salamander was not really asking for a bond reduction. Ms. Semmes reminded Council that this was not a traditional development project; and, noted that it

was covered under the Water & Sewer Agreement with Salamander. She advised, however, that this was still a contract; and, reported that the Town Attorney was looking at how this request related to the agreement. Ms. Semmes reported that the Town Attorney had some concerns about the request; and, advised Council that they needed to be addressed.

Town Administrator Semmes explained that Town Attorney Whiting was not confident about the amount of the reduction that was proposed; and, noted that she shared this concern. She advised that Ms. Whiting was also concerned, based upon Anderson's submission which exempted outstanding change orders from the calculations, that this could leave the Town without recourse if there was no agreement between Salamander and Anderson on the items. Ms. Semmes noted the one year warranty and bond that was called for in the agreement that covered both facilities; and, advised that this must be coordinated. She explained that this was similar to what was required in a performance agreement; and, noted that under state law, the Town was allowed to retain five percent of the bond as a maintenance bond for one year to make sure the plant operated correctly. Ms. Semmes explained that, as these reductions advanced, the Town needed to make sure those items were addressed. She expressed her opinion that these items were not of immediate concern, other than the five percent retainage.

Town Administrator Semmes advised Council that she and the Town Engineer conducted a site walk-through last week; and, identified a list of items that needed to be addressed. She noted that she did not yet know the value of the list. Ms. Semmes advised that the Town Engineer believed that approximately one-half of the site work costs should be retained, or half of \$314,000. She noted that she would also like retainage for the SCADA system, which has been installed but for which no training has occurred. Ms. Semmes reported that the Town's contractor also had concerns about how the SCADA system would operate; and, noted that those concerns needed to be resolved. She advised that Salamander was proposing to keep the landscaping bond in place.

Town Planner Beniamino advised Council that there was an issue associated with the access road. He reminded them that at the beginning of the project, the Town spent money to make sure the road could handle the construction traffic. Mr. Beniamino noted that one side of the road contained a creek, while the other contained wetlands. He reiterated that the Town treated and graveled the road; and, did work on the culvert. Mr. Beniamino explained that the staff wanted to make sure there has been no damage to the culvert. He noted that the road was not in terrible shape; however, it was not in great shape either. Mr. Beniamino advised that the staff would like the developer to re-gravel the road, fill in the potholes; and, make sure the culvert was in good shape.

Town Planner Beniamino advised that the other aspect for site retainage was that Salamander installed the pavement during cold weather. He noted that while Mr. Jerussi felt the pavement would hold up, the staff would like to make sure that a portion of the bond was retained until at least May. Mr. Beniamino reminded Council of the cold winter; and, noted that there was a chance the pavement could experience disturbance as the ground thawed. He noted that there was also an issue with missing down spouts.

Town Administrator Semmes advised Council that a personnel gate was installed in the back fence, as opposed to the twelve foot gate that was shown on the site plan. She noted the need for the gate in order to get to the site to mow. Ms. Semmes advised that, generally, the site grading needed to be fixed. She reported that there was nothing "huge" on the list.

Town Planner Beniamino reported that the staff has not met with representatives from Salamander to discuss the list; and, hoped to do so before March 10th.

Mayor Davis noted that the Council has received draft motions for their consideration.

Councilmember Snyder advised Council that he was not comfortable with the proposed motion for the wastewater treatment plant.

Town Planner Beniamino advised Council that while the bond for the water treatment plant was okay, it expired on March 10th; and, must be renewed. Councilmember Snyder expressed his opinion that the draft motion and text were not in alignment. He noted that the motion talked about a \$1 million bond release, whereas the text talked about an \$113,000 bond. Town Administrator Semmes explained that this was the amount Salamander requested; and, noted that the staff did not yet know the amount. Town Planner Beniamino recommended the Council approve the release contingent upon the Town Administrator approving a final number. Town Administrator Semmes noted that she was thinking the amount should be in the \$400,000 range.

Councilmember Murdock noted that the Application for Certificate of Payment indicated an amount due of \$718,386. She asked about the details of that amount and whether it had been paid. Dermott Ryan, representing Salamander Development, confirmed the amounts have been paid. He explained that this payment would be reflected in the next pay cycle, which would identify the lien releases as the sub-contractors were paid. Town Administrator Semmes asked whether Salamander could prove that Anderson has been paid. Councilmember Murdock noted that it showed as being unpaid in the documents provided by Salamander. Jonathan Rak, the attorney for Salamander, advised Council that the waiver and release of lien were also attached to the document.

Vice Mayor Kirk noted that the Council needed to approve the motion for a ninety day extension. She asked whether Salamander was okay with that.

Prem Devadas, representing Salamander Development, expressed hope that they could discuss the Town Administrator's comments. He thanked the Council for meeting to address these issues. Mr. Devadas expressed his opinion that the wastewater treatment plant was no different than anything that Salamander had tackled during the last three years. He asked for an outcome that was fair for both sides. Mr. Devadas advised Council that he wanted to discuss and demonstrate where Salamander was with regard to the amount of the release and the scope of work completed. He noted that he did not want to get into a conflict with the Town. Mr. Devadas advised that, as the Town's counsel weighed in on the issues, his legal counsel has weighed in on Salamander's rights and options; and, noted that he did not "want to get there". He asked that Council recognize where the two entities could end up if the outcomes were not fair; and, reiterated that he did not want to go there. Mr. Devadas expressed hope to discuss the request so they could avoid going to the next step. He noted that his representatives have heard the staff's comments; and, suggested the staff was looking for retention of \$400,000. Town Administrator Semmes stressed that she did not know the amount of the retention.

Mr. Ryan reminded Council that the wastewater treatment plant had been operational for quite an amount of time. He noted that the contractors have been back and forth with the punch lists. Mr. Ryan advised that in determining the \$113,000 figure, he considered that the plant was essentially complete, with the exception of the landscaping and striping for the parking spaces. He noted that there were some operational issues; and, reported that GE and InstaLogic were going back and forth with Loudoun Water to try to figure out the technical programming components. Mr. Ryan advised that the majority of this work was being done over the phone due to the advanced technology at the plant, which has given the vendors remote access into it. He reported that Salamander recognized that the SCADA system was not functioning as Loudoun Water wanted; and, advised that the primary reason was that from the time of design to work completion, the system morphed into something greater than designed. Mr. Ryan noted the changes orders that were executed during construction in order to meet Loudoun Water's requirements related to controls for the plant.

Mr. Ryan advised Council that a key element of addressing this issue was that InstaLogic, which was one of the sub-vendors, has told him that one of the components that was purchased during the change order process was not compatible with the system. He reiterated the need to work that out through a programming mechanism. Mr. Ryan advised that Salamander did not contemplate that this would cost a lot of money; however, he agreed it needed to be done. He reiterated that InstaLogic was trying to get together with Loudoun Water to figure out how this could be done. Mr. Ryan explained that the plant consisted of components that needed to talk to each other. He further explained that, currently, when they did so alarms were sounding. Mr. Ryan noted that these alarms resulted in the operators having to come to the plant every ten minutes. He reiterated that from a dollar perspective, addressing the SCADA issue did not have a big dollar impact. Mr. Ryan suggested that \$50,000 was sufficient to address it.

Mr. Ryan noted that Salamander recognized the need for retaining the bond on the landscaping. He advised that as to the Town Engineer's comments on the site plan, he could not address them as they were new. Mr. Ryan advised that PHR&A had certified the bond reduction amount; and, noted that the engineers have certified the release of payment to Anderson, which brought the amount down to \$113,000.

Mr. Ryan expressed his opinion that it was important to recognize that Salamander had a contract with Anderson. He noted that while the Town was not named in it, there was a performance bond from Anderson in the full value of \$5.8 million. Mr. Ryan advised Council that Anderson had not called for a reduction of this amount; and, would keep the full amount for the warranty period. He reiterated that Salamander had a performance bond; and, suggested it could be transferred to the Town if needed.

Mr. Ryan advised Council that he had sign-offs, apart from the Town's; and, advised that his engineers have signed off that the plant has been substantially completed since February. He expressed his opinion that this allowed the retention to be reduced from ten percent to five. Mr. Ryan reiterated that his engineers certified the plant to be in substantial completion in February. He advised that Salamander still held five percent to account for the delta costs. Mr. Ryan reiterated that there was a performance bond from Anderson for the full value of the construction costs.

Mr. Ryan advised that the biggest thing he heard the staff raise would result in a retainage of fifty percent of \$400,000. He expressed his opinion that \$113,000 was adequate for the cited deficiencies. Mr. Ryan reiterated that there was a bond from the contractor for the full \$5.8 million. He noted that the Town would also have a warranty that ensured that the contractor must come back to finish the project or the bond could be called in order to get the work completed.

Town Administrator Semmes recommended the Town not take on Anderson's performance agreement; and, noted that this was something that was between Salamander and Anderson. She reminded Council that Salamander's contract with the Town called for a maintenance bond in the amount of five percent of the plant's construction costs. Ms. Semmes advised that the problem was that the maintenance bond was supposed to occur at the time of the facility's acceptance; and, noted that the Town has not yet accepted it. She advised that she was trying to keep this matter out of the realm of the attorneys; however, she noted that the Town did not want to be forced into an acceptance of the plants before it wanted to do so. Ms. Semmes noted that Salamander was relying on its consultants, just like the Town was relying on Loudoun Water and its consultants. She reminded Council that she could not talk about the SCADA system; however, she advised that she was pushing to get it resolved.

Mr. Devadas explained that his problem was that the system has been working; and, noted that it has been used for several months. He advised that the SCADA system was something that Loudoun Water “threw in the mix”; and, that the Town asked Salamander to do even though it was not in the agreement. Mr. Devadas expressed his opinion that Salamander talked about and debated the SCADA system at length, as they did not think it was necessary or right. He advised that because the Town took their consultant’s view, Salamander did as well. Mr. Devadas noted that the Town was now saying that it did and would not work, which rubbed him the wrong way. He asked where the fairness was; and, reiterated that the system was operational and being used. Mr. Devadas suggested that the process of the Town’s consultant went “on and on and on”, while Ms. Johnson’s money was being held. He expressed concern that the consultant could come back in a few weeks with more things on their list. Mr. Devadas explained that he was trying to put a “reasonable box” around this; and, advised that if the Town did not believe that \$113,000 was a reasonable bond amount, he wanted to find a number. He reiterated that he was trying to get this issue contained. Mr. Devadas noted that someone recently told him that it was a good thing that the plants were not tied to funding, otherwise, they could have been dead in the water and not returned for a long time. He further noted that he has been telling Ms. Johnson for three months that they were about to have a ribbon cutting ceremony. Mr. Devadas advised that while he agreed with Town Administrator Semmes’ assessment, he could not wait an infinite amount of time to resolve this matter. He asked that the Town’s representative provide an analysis of their findings; and, noted that the Town and Salamander should be able to work this out.

Town Administrator Semmes asked whether Salamander had any idea of how long it would take for InstaLogic and Loudoun Water to work out the SCADA system issues. She noted that it was surprising to the Town to get a letter saying the system would not work. Ms. Semmes reminded Council that InstaLogic has been involved in the project all along; and, noted that they were now saying at the end of it that the SCADA system would not work.

Mr. Ryan advised Council that getting the right people from Loudoun Water to the table was not easy. He noted that InstaLogic provided the SCADA systems for all of Loudoun Water’s systems; and, were the “big company” in this arena for both water and wastewater treatment plants. Mr. Ryan reiterated that they worked at most of Loudoun Water’s facilities. He advised Council that InstaLogic has put the problem on the table for a month, without a response from Loudoun Water on how to resolve it.

Town Administrator Semmes asked whether Salamander was expecting a meeting between the two. She further asked whether they were talking at the plant. Ms. Semmes asked whether the Town needed to force a meeting.

Councilmember Littleton expressed his opinion that there was no excuse for the two entities to not get together if InstaLogic worked on other Loudoun Water facilities. He suggested that Loudoun Water should have a financial hold on InstaLogic due to that work.

Mayor Davis suggested that someone should have let the Town know if the two were not communicating. Vice Mayor Kirk asked the Town Administrator to reach out to Loudoun Water.

Councilmember Snyder noted that given the system and testing needed, the resolution would take time. He suggested, however, that there was no excuse for not showing up. Mr. Snyder reiterated that it would take time to straighten out the issues; and, suggested it could take three to six months. He explained that there were too many moving parts that must trigger correctly that were not. Mr. Snyder expressed his opinion that this issue could be addressed through a formal agreement that indicated that Salamander would satisfy Loudoun Water; and, would get InstaLogic to address the issues.

Town Administrator Semmes advised Council that the Town's consultants were recommending that the Town not accept the plant until the SCADA system was operating properly as it was an essential component to the operation of the plant. Councilmember Snyder noted that the SCADA system was the link between the plant and the personnel. Vice Mayor Kirk noted the need for Loudoun Water to work with people. She reminded Council that Loudoun Water was undergoing a transformation; however, she suggested this was not an excuse for not responding. Town Administrator Semmes noted that the software employee for Loudoun Water had not changed.

Mr. Devadas expressed his opinion that whatever Loudoun Water recommended was "wrong". He suggested that when dealing with agencies such as theirs, they sometimes made mistakes and took a long time to correct them. Mr. Devadas expressed his opinion that it would be nice if an independent engineer could identify how much the problem would cost to resolve so Salamander could move on.

Town Planner Beniamino advised Council that he has been told that this could be done within the next couple of days. Vice Mayor Kirk asked whether the Town had a time frame for doing so. Town Planner Beniamino noted that there was a difference between the SCADA system and the site work, which was weather dependent. He reminded Council that the performance agreement covered both the site work and the plant. Mr. Beniamino reported that he tried to get to the site quickly after the Town was asked for a site inspection.

Councilmember Littleton noted that he did not understand the issues if InstaLogic did a lot of work for Loudoun Water.

Mr. Ryan expressed his opinion that the issue was the urgency of the matter. He explained that while there were a lot of alarms, the system was working fine. Mr. Ryan expressed his opinion that the plant met the State's requirements. He reiterated that multiple alarms were being triggered; and, noted that this was a complex system. Mr. Ryan suggested that nothing was broken; and, expressed his opinion that this was just a question of on-going operations. He reiterated that the system was complex; and, expressed his opinion that the issue was one of a programming scenario that must be figured out at the computer. Mr. Ryan suggested it would not cost \$50,000 to fix the problem. Councilmember Snyder expressed his opinion that Salamander should not be so sure that this would not be the case.

Mr. Ryan reminded Council that the plant design started with a simple system; and, noted that they have kept layering on top of it. He advised that rather than having the alarms centralized, they were now localized. Town Administrator Semmes advised Council that this would be acceptable if the operators were at the plant all the time.

Councilmember Littleton suggested that someone needed to focus on the problem. Councilmember Snyder expressed his opinion that this issue needed to be urgent for someone. Councilmember Littleton suggested that InstaLogic's payments be held until the problem was resolved. Town Administrator Semmes reminded Council that the Town did not have a contract with InstaLogic.

Mr. Rak expressed his opinion that Loudoun Water was the problem. Councilmember Littleton suggested that Loudoun Water hold their check for InstaLogic. He suggested the Town could ask them to do so. Vice Mayor Kirk expressed her opinion that the problem was with Loudoun Water. Town Administrator Semmes noted that she had heard that it was hard to get in touch with the InstaLogic representative; and, that it was not easy to get him to a meeting. She agreed with the need to get Loudoun Water and InstaLogic together as soon as possible.

Vice Mayor Kirk asked whether Salamander was okay with a ninety day extension of the bond for the water treatment plant. Mr. Ryan confirmed that their only request was related to the timeline. He advised Council that a punch list meeting was held with everyone on February 3, 2011. Mr. Ryan reported that Salamander has implemented the majority of the punch list items. He noted, however, that Salamander needed Loudoun Water's punch list so they could finish the project within ninety days. Town Administrator Semmes noted that Loudoun Water promised she would receive the list last Monday; however, she has not received it, which was frustrating. Vice Mayor Kirk recommended the Town Administrator set up a meeting with Loudoun Water to tell them that they needed to be more responsive, as they were hurting the progress of the project.

Mayor Davis inquired as to the staff's recommendation. Town Administrator Semmes recommended the Council conditionally approve the request, with the staff coming up with a final number. Councilmember Murdock asked how the Council was supposed to approve the motion without an amount. Vice Mayor Kirk recommended the Council issue a conditional approval, up to a certain amount.

Town Administrator Semmes asked whether Salamander wanted to have the option of offering a letter of credit in the event that the amount was higher. Mr. Rak expressed his opinion that Salamander could not get a letter of credit in place by March 10th, even if they knew the amount tomorrow. He noted that their form of deposit was with Middleburg Bank. Mr. Rak suggested that if the amount was \$400,000, he would discuss this with Mrs. Johnson. He further suggested that if the difference was split, Salamander could get to work easily.

Councilmember Murdock asked when the staff would know the amount. She further asked whether the Council could address this issue during their regular Council meeting. Town Planner Beniamino confirmed they could not as the current bond expired on March 10th. He noted that the Town would have to send a letter calling the bond no later than March 9th, if a new letter was not in place. Mr. Beniamino suggested the Town could do that; and, then send a revocation letter on the day the bond was due.

Mr. Devadas advised Council that he would like a decision to be made so they could move on with the project. Town Planner Beniamino reported that he would visit the site with Mr. Jerussi today. Mr. Jerussi noted the issue related to the pavement. He reminded Council of the \$5.8 million performance bond; and, advised that the pavement was covered and warranted.

Mr. Rak noted that the general contractor warranted the work in the contract to the owner. He suggested that this warranty did not have to be transferred. Mr. Rak noted that this warranty was backed up by a bond. He expressed his opinion that the Town would not have to call the bond as the general contractor was a licensed contractor who has been in business for years. Mr. Rak further expressed his opinion that the contractor would stand by his product. He noted the need for caution as the punch list contained items that were not done. Mr. Rak reminded Council of the difference between punch list and warranty items. He urged caution that the deposit amount should not be increased due to warranty items.

Vice Mayor Kirk suggested the motion include a not to exceed amount. Councilmember Snyder advised Council that he was more comfortable indicating that the amount would be determined by the Town Administrator.

Councilmember Murdock asked the Town Administrator to let the Council know, either by phone or email, of the amount of the cash escrow before she signed the agreement. Town Administrator Semmes expressed her opinion that it would not be more than five percent of the original bond amount. She reminded Council that eventually, the Town would need a bond in the amount equivalent to five percent of \$4.5 million under the terms of the agreement.

Mr. Rak reminded Council that the agreement covered both plants; therefore, it was five percent of the total for both plants. He expressed his opinion that there was not \$400,000 worth of work remaining.

Town Administrator Semmes confirmed that she would figure out what the amount should be. She noted, however, that the Town was not accepting the plant; and, reported that they were not there yet. Ms. Semmes expressed hope to get to that point before ninety days. She reiterated that the Town was not saying it was accepting the plant at this time; and, noted that they were only working to reduce the bond amount.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve a ninety day extension of the Salamander Facility Letter of Credit #3094451 in the amount of \$400,000. Councilmember Snyder further moved, seconded by Vice Mayor Kirk, that Council approve a release of the Salamander Facility Letter of Credit #3089772 in the amount of \$1,000,000 conditioned upon the execution by the Town and Salamander Resort & Spa of an escrow agreement and receipt by the Town of a cash escrow in the amount to be determined by the Town Administrator.

Town Administrator Semmes asked that the cash escrow be received no later than the end of the business day on March 9.

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

No – N/A

Abstain – N/A

Absent – Councilmembers Hazard and Stewart

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

Mayor Davis asked the staff to work with Loudoun Water and InstaLogic to get the work done. Councilmember Littleton noted that while difficult to do, Salamander needed to alert the Town when Loudoun Water was not doing what they were supposed to do; and, explained that the Town needed to know when this occurred.

Mr. Devadas advised Council that it was his observation that this has consistently been a problem.

Town Administrator Semmes expressed her opinion that this was the result of Loudoun Water's operating multiple plants. She noted that they recently experienced a problem in Lovettsville, which required them to pull their people off the Middleburg system. Ms. Semmes advised Council of the need to have a talk with Loudoun Water about their service in the future.

Vice Mayor Kirk suggested the need to consider having a water person on the Town's staff. She noted that Hamilton just did this. Town Planner Beniamino reported that Loudoun Water was only assisting Hamilton on a temporary contract basis. He explained that there were no plans for Hamilton to use Loudoun Water in perpetuity.

Town Administrator Semmes advised Council that she was expecting a proposal from an alternate company for operating the Town's system. She suggested this was something to consider. Mayor Davis noted the need to get things done in a timely manner.

Council Discussion – Draft FOIA Policy

Town Clerk North advised Council that the Town Administrator asked her to develop a Freedom of Information Act (FOIA) Policy as the Town was now receiving such requests. She explained that the first two paragraphs of the proposed policy were essentially a brief synopsis of FOIA, with the third paragraph being the “meat” of the policy. Ms. North explained that as proposed, individuals who were interesting in making a FOIA request would be asked to do so through the Town Clerk, as she was the official custodian of the Town’s public records. She noted that the policy also identified the charges associated with a FOIA request. Ms. North advised that the last item was a fill-in-the-blank form for the individual’s name, contact information and an area for identifying the records sought. She reminded Council that under FOIA, the Town could not require the individual to complete this information. Ms. North suggested that if he/she did not want to do so that the staff complete the form and give the individual a copy. Ms. North noted that this would provide the opportunity for the individual to let the staff know if the information listed was not what they were seeking.

Councilmember Murdock asked whether the individual had to identify what they were seeking. Town Clerk North confirmed that the individual had to be reasonably specific as to what records they were seeking. She expressed her opinion that if this was in writing, there was less of an opportunity for a misunderstanding.

Mayor Davis asked whether the request had to be submitted in writing. Town Clerk North confirmed that State law did not require the request to be submitted in writing. She noted that the individual did not even have to identify it as a FOIA request.

Vice Mayor Kirk recommended that a not-to-exceed amount be included in the policy. She explained that she wanted to give the individual the ability to say “I’m not willing to pay more than \$20”. Town Clerk North explained that under FOIA, if the Town anticipated the costs to exceed \$200, it must give the individual an estimate and could ask for a deposit. Vice Mayor Kirk reiterated her suggestion that an estimate be included up front in order to give the individual an opportunity to say “no”. Councilmember Snyder agreed this was a good idea.

Mayor Davis asked whether the individual would be given a copy of the FOIA policy. Town Clerk North suggested the information section be completed, with a copy being given to the individual.

Mayor Davis asked whether individuals were currently given a copy of FOIA that explained the deposit. Town Clerk North confirmed they were not; and, noted that the Town did not currently have a policy.

Town Administrator Semmes suggested that the form be placed on the Town’s website. She noted that the staff was not trying to make the process more difficult. Councilmember Murdock noted that the Town did not want people to think that they could make FOIA requests, with there being no charges. Town Administrator Semmes explained that the Town only wanted people to understand the law. She noted that the staff also wanted to follow the law.

Town Clerk North noted that people also needed to understand that the Town was not required to create records for them. She reminded Council that FOIA only applied to existing records.

Councilmember Shea asked how electronic records would be handled. She asked whether they were covered under the policy. Town Clerk North noted that electronic records were treated the same as paper records under FOIA. Councilmember Murdock asked whether the Town could provide records electronically. Town Clerk North confirmed it could.

Town Administrator Semmes recommended that the Town not provide word documents electronically, as they could be altered. Town Clerk North reported that the most sought after electronic files were the Town Council meeting recordings. She noted that in those cases, she provided the individual with the electronic recordings in the program in which they were recorded. Ms. North explained that the individual then had to access the software company's website to get a reader version of the program in order to listen to the files.

Mayor Davis asked whether there was a charge for getting those files. Town Clerk North advised that there has not been a charge in the past because the Town has not had a FOIA policy in place. Councilmember Shea asked whether the charge would be related to the staff time associated with filling the request. Town Clerk North confirmed it would. She suggested the Town could implement a fee, such as \$5 for electronic records. Ms. North reminded Council that the Economic Development Coordinator provided copies of the Town's business license list to individuals at a cost of \$5 electronically or \$10 for a paper copy. She suggested that the FOIA policy could be similar. Councilmember Murdock asked how the Town would collect the money. Ms. North explained that the individual would have to submit payment before the records were sent.

Councilmember Littleton asked whether they would pay a per page charge. Town Clerk North confirmed that the policy proposed a ten cent per page charge for paper copies. She noted that there was an exception in the policy that if the records consisted of less than five pages and took less than five minutes to find that there would be no charge. Ms. North explained that in that case, it would take more staff time to calculate the charges than the Town would collect. She confirmed that the charge for copies would be ten cents per page, plus staff time to find the records. Ms. North reminded Council that the research time may not necessarily involve her staff time; and, noted that if it was for police records that the Chief of Police had to research, then the costs would be based upon his staff time.

Councilmember Shea recommended that a line be added to the form for the staff member who accepted the FOIA request to initial. She asked whether maps or plats fell under FOIA. Ms. Shea asked how maps were handled if they were too large to copy. Town Administrator Semmes reported that in Purcellville, they provided the requesting party an estimate for making the copies as they had to send them out to be copied. Town Clerk North advised Council that the draft policy included a clause that indicated that if a file could not be reproduced in-house and had to be sent out for copying, the charge would be whatever the copy company charged the Town.

Councilmember Snyder expressed his opinion that the policy looked fine with the suggested changes.

Town Administrator Semmes advised that from a staff perspective, in the past, whoever received the request fulfilled it. She noted that there may not have been a record of how or when it was fulfilled. Ms. Semmes suggested that by having an administrative policy, the Town Clerk would track the request, even if it was filled by someone else. Ms. Semmes noted that the policy allowed the Town Clerk to track requests so she could ensure they were fulfilled by the deadlines or request an extension if necessary. Town Clerk North explained that this would also help the individual who was requesting information as he/she would only have to deal with one staff member. Vice Mayor Kirk expressed her opinion that this was a great idea.

Mayor Davis asked whether the Council needed to officially adopt the policy. Councilmember Shea expressed her opinion that it was an administrative policy.

Review of March 10th Meeting Agenda

Town Clerk North reported that Eura Lewis has asked that her report on the museum be removed from the Public Presentation agenda. She explained that Ms. Lewis may speak under “Public Comments” instead. Vice Mayor Kirk advised Council that the Museum Committee was meeting again today; and, she would find out more information.

Councilmember Shea noted that she was struggling with the Museum Committee as she had it on her calendar that the meeting was on March 16th. Town Administrator Semmes reminded Council that the committee was not an official committee at this time. She noted that once they became an official Town committee, the meetings would be listed on the Town’s meeting calendar. Councilmember Murdock suggested that someone from the Council who was also serving on the Committee take over the meeting notification duties. There was some discussion regarding the need to ensure that a quorum of the Council did not attend the committee meetings. Mayor Davis suggested that a member of Council who attended the meeting be responsible for ensuring the next meeting date was set.

Mayor Davis reviewed the agenda’s action items. She noted that they included a resolution of appreciation to Lynne Galbreath for her service on the HDRC; a resolution of support for the expansion of the Middleburg Library; the Council’s goals for the Planning Commission; the Council’s goals and objectives for 2011; a proclamation for Arbor Day; an ordinance establishing the Middleburg Museum Committee; the appointment of the Middleburg Meandering Trail Committee; and, the appointment of the Streetscape Committee.

Vice Mayor Kirk asked whether the meeting dates/times would have to be posted once the Middleburg Museum Committee was established. Town Clerk North confirmed they would. She noted that she has advised Ms. Lewis that if she set the meeting dates on a regular schedule, such as the third Thursday of each month, she could include this on the meeting calendar. Ms. North further noted that this meeting calendar was sent to the press monthly; therefore, it met the meeting notification requirements. She advised that if special meetings were called, the press needed to be notified. Vice Mayor Kirk noted that Ms. Lewis also needed to notify the Town Office, not only of the meeting date and time, but also the location.

Councilmember Shea asked whether this same notification requirement applied to ad-hoc committees. Town Clerk North confirmed it did. Councilmember Shea asked whether this applied to Go Green. Town Clerk North confirmed that the Go Green meetings were listed on the Town’s meeting calendar. She noted that if special meetings were held, the press needed to be notified of those. Councilmember Shea noted that Go Green was now meeting every other week.

Councilmember Murdock asked whether the press needed to be notified of the Middleburg Meandering Trail Committee meetings. Town Clerk North confirmed it did. She noted that the Town Planner has been notifying her of the meeting dates; and, she has been including them on the Town calendar.

Vice Mayor Kirk suggested that all of the Town committees be alerted that they needed to notify the Town Clerk of any meetings they held so they could be listed on the Town calendar. Councilmember Shea suggested it would be good to notify the ad-hoc committees of their responsibilities.

Mayor Davis asked whether the ordinance to establish the Museum Committee included a limit on the number of members. Town Clerk North confirmed it included a limit of not less than five or more than seven as currently written. She noted that the Council could change this if they wished. Ms. North reminded Council that the Committee would have to meet quorum requirements; and, suggested it not be so large that it could not achieve a quorum. She noted that there would be opportunities for people to serve on sub-committees and the 501(C)(3) board as well.

Mayor Davis noted that the agenda also included appointments to the Middleburg Meandering Trail Committee. Councilmember Murdock asked whether that committee would also have to meet quorum requirements. Town Clerk North confirmed it would. Councilmember Murdock noted the Loudoun and Fauquier County representatives were listed as members; and, asked whether they could be identified as something else. Town Clerk North reminded Council that they were included on the committee because this was required as a part of the grant agreement the Town signed with VDOT.

Councilmember Murdock inquired as to how many members would have to be present to meet the quorum requirements for a nine member committee. Councilmember Snyder noted that five would be required. Councilmember Murdock suggested this would be a problem, as they have never had five people present. She noted that she told Loudoun and Fauquier Counties that their representatives would only have to attend a meeting once or twice a year. Councilmember Snyder suggested that they be made non-voting members. Town Clerk North reminded Council that the grant agreement the Town signed required members from other jurisdictions serve on the committee. Town Administrator Semmes expressed her opinion that they did not have to be voting members; and, suggested that they not count for purpose of the quorum. Town Clerk North advised that if this was the case, the Council would have to amend the ordinance establishing the committee as these two individuals were listed as committee members in the ordinance.

Councilmember Snyder suggested that this be done if those two members were not serious about attending the meetings. Councilmember Murdock explained that the supervisors were told the Town would not burden these people with having to attend meetings. Councilmember Snyder suggested that they would be burdened if they were counted as a part of the quorum. He further suggested that the Town not burden them by amending the ordinance to remove them from the quorum. Town Administrator Semmes noted that Loudoun and Fauquier Counties were not a part of the grant agreement; and, suggested that the Town could not burden them. She expressed her opinion that the Town may have to amend the ordinance.

Councilmember Shea suggested that if the Town has asked the supervisors to appoint someone to the committee, it could not then go back and say “you will not have any responsibilities or vote”. Councilmember Snyder suggested they could still have a vote, but just not be counted as a quorum. Councilmember Murdock explained that they were happy to know they did not have to come once a month for a meeting; and, expressed her opinion that they were not needed that often. She asked where the Council should change this requirement. Town Clerk North advised Council that she would check with VDOT on the terms of the agreement; and, if possible, would provide an ordinance amendment.

Vice Mayor Kirk asked whether the Council needed to make appointments to the Museum Committee. Town Clerk North confirmed it did; however, she recommended that they get the ordinance to establish the committee approved first. Councilmember Shea asked that the same be done for Go Green.

Mayor Davis asked whether the members of the Streetscape Committee were the ones that currently existed. Town Clerk North confirmed they were. She reminded Council that they have now made Streetscape an official Town committee; therefore, they needed to officially make the appointments.

Councilmember Murdock asked whether there would be a closed session during the regular meeting. Town Administrator Semmes confirmed there would; and, advised that the motion would be available the night of the meeting.

Councilmember Murdock reported that Loudoun County Supervisor Trumbo has asked about a ban on eighteen wheelers on certain roads. She asked when she should raise this issue. Mayor Davis suggested that Councilmember Murdock report on this during the regular meeting under “Reports of Town Committees”; and, noted that this was a public safety issue.

There being no further business, a motion was made to adjourn the meeting at 9:11 a.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk