



MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes
Thursday, March 11, 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
Steven L. Webber, Chief of Police

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting on Thursday, March 11, 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.

Approval of Minutes

Councilmember Snyder moved, seconded by Councilmember Plescow, that Council approve the February 25, 2010 Regular Meeting minutes and the February 25, 2010 Work Session 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 noted that his written report contained updates on the Salamander Project. He reported that he has not heard anything related to the payments for the operational expenses associated with the wastewater treatment plant. Councilmember Murdock asked what was being done to address this. Town Attorney Whiting advised Council that the last time she spoke with Jonathan Rak, Salamander's attorney, was after the Town agreed to approach Mr. Devadas informally. She explained that the purpose of her contact was to let him know that the

Town hoped to nudge some movement. Town Administrator Schiro confirmed that he approached Mr. Devadas, who indicated that he was looking at this with Mr. Rak and their finance person. He reminded Council that it would be critical to the budget process for the Town to understand what fees would be received. Mr. Schiro suggested this was a better discussion for another time; however, he expressed his opinion that it should be kept on the front burner.

Councilmember Snyder noted that he held a brief conversation with the Town Administrator regarding Salamander's use of Town water for their HVAC system; and, the need to get them to turn over the wells to the Town. He reminded Council that Salamander came to them some time ago with a request to use Town water for their HVAC system; however, the Council said "no" at the time. Mr. Snyder suggested that even if they used only a few hundred thousand gallons a month, this would provide some revenue. Mayor Davis asked whether this would occur once the resort opened. Town Administrator Schiro reminded Council that the wells were not the Town's yet, but were private wells. Town Attorney Whiting reminded Council that their agreement with Salamander required them to turn over all of the water system to the Town once the water treatment plant was complete. She advised that it would be the Town's at that point. Vice Mayor Kirk reminded Council that the Town must accept the system. Councilmember Snyder agreed the Town must accept the water treatment plant. He suggested that if Salamander was interested in using Town water before then, the Council must look at this. Town Administrator Schiro expressed his opinion that they would not as they have already gone to the expense of connecting to the private well.

Councilmember Snyder asked about the completion date for the water treatment plant. Town Administrator Schiro advised Council that they were waiting for the processing equipment. He reminded them that it did not get ordered soon enough. Mr. Schiro further reminded them that previously the equipment manufacturers were not very busy; however, with the release of the federal stimulus money, new projects have made this project a small one. Councilmember Snyder asked whether the staff had an estimated completion date for the water treatment plant. Town Administrator Schiro reported that Salamander was saying May. Councilmember Snyder suggested that if it occurred this spring, it would be a good thing as the sooner Salamander turned over the water treatment plant, the sooner the Town would have the opportunity to make them a revenue source.

Councilmember Shea asked whether it was correct that Salamander went to the expense of putting in a private well. Town Administrator Schiro explained that the well would eventually be turned over to the Town. He noted, however, that Salamander went to the expense of connecting to it for their HVAC and other systems. Mr. Schiro reminded Council that Salamander had asked to use Town water for their systems; however, the Council was hesitant to approve it due to the lack of capacity. He reiterated that the Council denied use of Town water in the interim until the resort opened. Mr. Schiro explained that, at that point, Salamander made arrangements to use the wells. He expressed doubt that they would go back now. Councilmember Snyder suggested that once the Town began to accept the new water treatment plant, which would probably be a few months from now, the Town should insist on that arrangement and start charging them for the water. Town Administrator Schiro noted that the Town could do so at that point; however, it could not prior to that time. Councilmember Snyder recommended the Town make sure they were in line to do so. Mayor Davis noted that this was what the agreement said. Councilmember Shea expressed her opinion that the Town could not require them to use the Town's system until the water treatment plant was in place. Town Administrator Schiro confirmed that once it was a public utility, the Town could bill Salamander; however, he advised that until that point, it could not. Councilmember Snyder expressed his opinion that the Town needed to bill what it could in order to pay for the system, particularly with its increased capacity.

Town Administrator Schiro noted that his written report outlined the status of the wastewater treatment plant. He advised that the exterior and site work were delayed by the weather; however, they were now making progress. Mr. Schiro reported that the electrical problems between the contractor and designer were resolved. He advised Council that the staff was reviewing the commissioning schedule with Loudoun Water, the engineers and the contractor; and, noted that the Department of Environmental Quality (DEQ) has now been included in the discussion. Mr. Schiro advised that this schedule would outline how to close the existing plant and to turn over the new one for service. Councilmember Snyder asked whether this would take three to six months. Town Administrator Schiro confirmed it would take a minimum of three months. He advised that the plant may achieve substantial completion prior to that time; however, the process of getting the plant up and fully operational was probably four months out. Councilmember Snyder suggested it would be six months before the Town could accept the plant. Town Administrator Schiro confirmed the Town would not accept the plant until it was operational and meeting permit requirements.

Town Administrator Schiro reported that the Marshall Street pavement was failing in the areas adjacent to the water line repairs. He advised that the contractors were returning to repair the portion that was covered by their contract; however, he noted that a portion of what was failing was located outside of that contract area. Mr. Schiro noted that he was looking to VDOT to see if they could provide any assistance. He reiterated that the failures were occurring adjacent to the old water line; and, suggested the open cuts for the new line may have affected the sub-structure. Mr. Schiro reminded Council that the Town was holding money on the pavement to make sure the contractor corrected what they were required to fix.

Mayor Davis asked when the Town would know about its request for federal aid related to the snow removal. Town Administrator Schiro confirmed the County has not yet heard from FEMA. He expressed his opinion that FEMA was very slow to respond to requests; however, he noted that it was in the works. Councilmember Murdock noted that the figures in the financial report were “sickening”. Town Administrator Schiro confirmed that snow removal was not cheap. Councilmember Murdock noted that the costs shown in the budget included both snow removal and overtime. Town Administrator Schiro confirmed that he included overtime in the reimbursement request. He expressed his opinion that the reimbursement would probably be allocated to Loudoun County, with the County then allocating it to the municipalities if they were eligible. Mr. Schiro reminded Council of the need to determine eligibility for municipalities that did not control their streets. He expressed his opinion that FEMA may not want to pay for VDOT to plow the streets, as well as pay for what the Town did. Mr. Schiro reminded Council that removing snow from the parking spaces was considered going above and beyond normal snow removal operations. Councilmember Murdock noted the exceptional job done in removing the snow from in front of the parking meters; and, asked who removed it. Town Administrator Schiro confirmed the Town did. He explained that FEMA would look at what was essential in order to get the traffic going. Mr. Schiro expressed his opinion that plowing the roads was essential; however, removing the snow from the parking spaces was not. He explained that he was not saying the Town would not get something; however, he suggested it would not get what it requested. Councilmember Murdock expressed her opinion that anything was better than nothing. Town Administrator Schiro advised Council that he would report to them as soon as he heard from the County.

Councilmember Murdock noted that she experienced brown water at her home earlier in the day. Town Administrator Schiro explained that the Fire Department opened a hydrant in her area; and, advised that he did not know why they used that particular hydrant. He reminded Council of the agreement with the Fire Department to use another hydrant for drills and other non-emergencies. Mr. Schiro noted that if time was of the essence, they could use others. Mayor Davis noted that if the Department was just refilling its truck, it was not necessary to use that particular hydrant.

Councilmember Murdock expressed her opinion that it was not fair for the residents to experience brown water if it was just a matter of not driving to the proper hydrant. Town Administrator Schiro reiterated that the Department used the hydrant at Windy Hill. Councilmember Murdock noted that she was not sure how many homes were affected. Town Administrator Schiro reported that it was just Mayor Davis' and Councilmember Murdock's to his knowledge.

Councilmember Murdock noted that the decision on the State grant for the Bluemont concerts would occur on June 1. She asked what would happen if the Town did not receive the grant. Councilmember Snyder suggested this would depend on the number of towns that signed up for Bluemont's services. He noted that the State was cutting back on its arts funding; and, suggested that Bluemont was at a tipping point. Councilmember Murdock suggested the need to wait. Councilmember Snyder recommended the Town budget for the concerts; and, if the grant was received, it could have them. Mayor Davis asked whether the Town had already given Bluemont money this year. Town Administrator Schiro reported that they did not get paid until the Town received the matching grant.

Town Planner Beniamino reminded Council of their previous discussions regarding additional trees for the wastewater treatment plant. He reported that the Streetscape Committee was looking at trees that would cost \$750/each. Mr. Beniamino noted that they were proposing to use healthy, larger Christmas trees; and, advised that they hoped to get them donated by Christmas tree farms in the area. He explained that the cost would be related to the spades. Mr. Beniamino suggested it may be possible for the Streetscape Committee to provide matching funds if the Town could come up with some money. Mayor Davis expressed her opinion that Salamander was planting the trees at the wastewater treatment plant. Town Planner Beniamino explained that Salamander would plant trees that would grow into full size street trees. He explained that the thought was to acquire eight to ten larger trees that would block the view of the plant. Councilmember Murdock asked whether the Streetscape Committee has seen the new driveway. Town Planner Beniamino noted that the new road was constructed this month; and, advised that he was unsure as to whether the members of the Streetscape Committee have seen it. Councilmember Murdock noted that the view of the plant was opened up more after its construction. She suggested that if the Committee based their plans on the previous views, they needed to look at it again. Town Planner Beniamino noted that they had not planned anything. He explained that they looked at what they had and what was needed. He reminded Council of the need to study the root structure of whatever was planted so the Town would not have issues with roots in the water lines in the future. Vice Mayor Kirk recommended that Punkin Lee be taken to the site. Town Planner Beniamino noted the need to determine if the trees would be donated. He advised that, absent a donation, the Town must pay for them. He reminded Council that the current plans called for some trees; however, he suggested they were not what were desired to provide a screen. Mr. Beniamino noted that the plans called for a lot of trees; however, they were not something that would address this issue. Vice Mayor Kirk asked whether Punkin Lee had looked into this matter. Town Planner Beniamino confirmed there were no evergreens planted. He suggested that when spring came, people would see the property differently; and, explained that they would not see the plant for the vegetation. Mr. Beniamino noted that it would be visible in the winter. Mayor Davis noted that the pine trees at her house grew two feet a year. Town Planner Beniamino confirmed that the trees that were currently planted would grow; however, he suggested they would take four or five years to provide an adequate screen.

Town Planner Beniamino reported that he issued a Notice of Violation to Richard Colandrea for trash and scrap materials that have accumulated on his property on Walnut Street. He further reported that he also issued a violation to the Middleburg Exxon for the illegal parking of vehicles in their ingress/egress lanes.

Councilmember Murdock noted that the Community Center received approval to install a wooden fence. She asked where the fence would be installed; and, whether it would affect the Farmers Market. Town Planner Beniamino confirmed it should not affect the Farmers Market. He explained that the Center was trying to prevent a recurrence of what happened during the last Christmas in Middleburg event. He noted that the fence would contain a gate that could be opened for sponsored events. Mr. Beniamino reiterated that the fence was to prevent parking on their property. Mayor Davis asked whether the fence would be a split rail one. Town Planner Beniamino confirmed it would. Councilmember Murdock asked how it would affect parking for those waiting for the school bus. Councilmember Littleton reminded Council that this was the Community Center's property. Town Planner Beniamino expressed his opinion that they may only close it during large events. He reiterated that the impetus for the fence was the damage done by vehicles parked on the property during the recent Christmas in Middleburg event. Mr. Beniamino advised Council that this was not an issue that could receive a conditional approval. Councilmember Littleton expressed his opinion that the Community Center did not plan to stop anything; however, if they had to, they could. He explained that this would allow the Center to stop motorists from going into the lower grassy area. Town Planner Beniamino reiterated that there would be a gate at the entrance that could be closed. Mayor Davis noted that the fence was being installed down to the houses. She asked whether visitors for the Farmers Market would be unable to park in this area. Vice Mayor Kirk expressed her opinion that they would do it anyway. Councilmember Murdock expressed concern that this would reduce the available parking for the Farmers Market. Councilmember Snyder reminded Council that the fence could not be installed in the right-of-way; and, noted that this right-of-way would still be available for parking. Councilmember Littleton noted that motorists could park inside the fence. Councilmember Snyder reiterated that it would still be possible to park along the side of the street.

Police Chief Webber reported that he just spoke with the Fire Chief, who was exploring what happened last night. He advised that the Chief was not aware of a truck hooking to the hydrant; however, he was not present last night.

Vice Mayor Kirk asked the Police Chief to thank Office Tharpe; and, explained that over the weekend she observed him in the area of the Post Office and Middleburg Bank writing tickets. She explained that this allowed the parking spaces to turn over; and, expressed her opinion that he was doing a good job.

Mayor Davis noted that, in looking at the Treasurer's report, the church parking lot's meter revenues were down. She asked how often the police officers monitored those meters. Ms. Davis expressed concern that motorists who were parking there for the day may not be feeding the meters. Chief Webber advised Council that they would keep an eye on this; however, he noted that in the past month, weather has been a factor. He noted that he could not explain the overall reduction in meter receipts. Mayor Davis reiterated her concern that motorists may not be feeding the meters. Councilmember Shea reported that she had a client who told her that she had to go to three meters to find one that worked. She noted that she shared this with the Chief. Ms. Shea expressed her opinion that it seemed that there were a lot of non-working meters lately. She noted that they were battery driven; and, asked whether new batteries were needed. Town Administrator Schiro reported that the batteries were changed frequently. He noted that when the weather changed from warm to cold, the batteries did drain. Mr. Schiro reiterated that the Street Superintendent changed them frequently. He advised Council that the parking meters were a maintenance problem. Mr. Schiro explained that the Street Superintendent ran coins through the meters to test them; however, afterward they would suddenly stop working. Councilmember Shea asked whether this could be a reason for why the meter revenue was down. Town Administrator Schiro noted that this did not occur frequently in the church parking lot; and, advised that it was mostly an issue related to the street meters. He confirmed that this could have some impact on revenues; however, he expressed his opinion that it would not have this kind of

an impact. Mr. Schiro expressed his opinion that there were usually a few meters down at a time; and, noted that the police did a good job of letting the Street Superintendent know about them. He advised Council that the parking meters were very temperamental. Councilmember Shea expressed her opinion that not all motorists would report a malfunctioning meter. Town Administrator Schiro confirmed that they did when they received a ticket. Vice Mayor Kirk expressed her opinion that the officers should issue tickets; and, noted that the Town could use the income. Town Administrator Schiro reminded Council that if a meter indicated that the motorist was in violation, the officer had no way of knowing that the meter was not working; and, would issue a ticket. He explained that under that scenario, the Town heard about the broken meter because the motorist received the ticket. Mayor Davis reiterated her request that the officers monitor the parking lot; and, noted that it may be nothing. Vice Mayor Kirk noted that the reduced revenues could be weather related. Mayor Davis noted that the revenue has been consistently down even before the snow. Economic Development Coordinator Pearson confirmed that there were not many cars in the lot. She advised that she was in this area earlier in the day; and, reported that there were plenty of available spaces. Mayor Davis noted that in the fall when the lots should have been full, they were full. She reiterated that the revenue was down consistently; and, suggested it was a good idea to check them.

Town Treasurer Wheeler reported that in February the Town received \$113,000 in business license receipts. She advised that, since that time, it has received an additional \$95,000, bringing the business license revenue in over the projected budget amount. Vice Mayor Kirk thanked the Town Treasurer for doing a great job.

Councilmember Murdock asked about the status of the Colandrea wall lawsuit. Town Attorney Whiting advised Council that she had thought there would be no suits pending by now. She reminded them that the last attorney representing the Colandreas had filed a motion to withdraw. Ms. Whiting further reminded them that the law suit had been noticed for two year removal due to inactivity. She reported that, unfortunately, the court clerk treated the motion for the attorney to withdraw as activity; and, reset the clock so the lawsuit had another two years to go before it could be removed for inactivity. Ms. Whiting advised that she has asked; however, she did not know if the clerk would reconsider whether the withdrawal of the attorney was really activity. Councilmember Murdock noted that this violation has been on-going for ten to eleven years. Town Attorney Whiting noted that she needed to confirm which lawsuit was no longer eligible for withdrawal due to inactivity; and, reminded Council that the last two have overlapped in time. She further reminded them that every one of the lawsuits has been brought by the Colandreas. Councilmember Murdock asked when the courts would say “enough”. She further asked whether this could go on for twenty or thirty years. Town Attorney Whiting explained that nothing happened in court unless the litigant made it happen; and, noted that in this case, the plaintiffs were content for nothing to happen. She noted that the Town has not filed with the courts to force them to do anything. Councilmember Murdock asked whether this was possible. Town Attorney Whiting confirmed it was; however, she asked whether the Council wanted to take this on now. She reminded them that this matter has been to the Supreme Court once; and, advised Council that if they pushed it, she would be busy. Ms. Whiting noted that the Town would have to be prepared to divert staff time to support the litigation, as well as pay her hourly fee. She advised that at times when the case has been discussed, she felt the Council had higher priorities. Vice Mayor Kirk expressed concern that the Colandreas were flaunting the violation. Town Attorney Whiting suggested the most effective way to resolve this issue may be to purchase the property. She noted that the legal process was least effective and least efficient when used by a person who was determined to thumb their nose at the system; but who was careful to not be in contempt of court. Councilmember Murdock asked whether the courts were watching this case carefully. Town Attorney Whiting confirmed they were not; and, explained that the courts have many cases before them. She explained that the courts wait for the litigants to say this needs to be addressed; and, reiterated that the courts did not police cases. Councilmember Plescow requested a two

sentence summation of what the Town needed to do to advance this case. Town Attorney Whiting advised that she has not filed zoning enforcement actions in the court without getting Council authorization because of the understanding that when this was done, it would run up a bill for the Town. She explained that she wanted the Council to know about and authorize this in advance. Ms. Whiting reminded Council that the six lawsuits to date have all been defensive ones from the Town's perspective. She noted, however, that even defensive suits took time. Vice Mayor Kirk asked whose time would be taken. Town Attorney Whiting confirmed it would be the staff's time. She noted that she has been conscious about not spending General Fund money without Council authorization.

Councilmember Littleton asked how much it would cost if the Council said to go forward with the enforcement. Town Attorney Whiting reminded Council that former Town Administrator Mike Casey had her prepare a report on what had been spent at that time. She noted that she took this report back to two or three years after the case started; and, advised that at that point, the Town had spent \$45,000-60,000 over the course of six lawsuits. Ms. Whiting advised that it would be hard to identify the cost; and, noted that the case that went to the Supreme Court was cheaper to defend. Councilmember Shea reminded Council that the past actions have been defensive ones; and, noted that litigation costs more. Town Attorney Whiting confirmed it would; and, noted that the Town would also have the burden of proving the case. She explained that if the Town wanted to compel compliance, she must file for injunctive relief to order the Colandreas to do "xyz"; and, if this was not done, the Town would have to bring them into court on contempt charges. Ms. Whiting advised Council of a court case, in another jurisdiction, in which an individual would not plant a buffer; and, noted that he ultimately served jail time. Councilmember Snyder reminded Council that that particular case took twenty years to litigate.

Vice Mayor Kirk expressed her opinion that the Town was putting itself in a vulnerable position, as others in the community could simply do what they wanted. Town Attorney Whiting confirmed that the Council must be prepared to push and establish the Town's rights when challenged. She explained that if they were not prepared to defend the zoning ordinance, the Town would not have one. Ms. Whiting advised that she could not set the Council's priorities; however, she would be as responsive as she could. She noted that when this issue has surfaced, she was using her time on other things that the Council deemed a higher priority. Mayor Davis asked whether something would occur after two years. Town Attorney Whiting explained that the only thing that benefitted the Town from the inactivity was that when the suit was dismissed, the Colandreas could no longer complain about those issues in the lawsuit; and, the Town would not have to litigate the merits of their argument. She reminded Council that the Colandreas have been complaining about the merits; and, have said the staff did not interpret the ordinance correctly and that they were entitled to build the fence where and to the height they did. Ms. Whiting explained that they were asking the court to reverse the Town's position. She reiterated that once their case lapsed, the Colandreas could not plead this again. Councilmember Plescow asked whether the Town could challenge that the withdrawal of an attorney was movement in the case. Town Attorney Whiting expressed her opinion that it would not take much to keep the case alive. She reminded Council that the clock was running; and, suggested that if they "poked the snake", the window could re-open for another two years. Ms. Whiting reminded them that this coming July would be one of the two years; and, suggested this case could possibly be dismissed in another year. Councilmember Snyder suggested that, given the Town's budget difficulties, it would be prudent to wait. Councilmember Murdock agreed that she did not want to spend any money; however, she noted that she wanted this matter to go away. Town Attorney Whiting reminded Council that the American courts did not allow those who prevailed to recover their costs. Mayor Davis suggested the Council wait another year.

Town Administrator Schiro reported that the utility flows for February were down.

Reports of Town Committees

Councilmember Shea reported that she attended a meeting of the Loudoun County Community Action Board earlier in the week. She further reported that as of April 1, they hoped to seat a new board. Ms. Shea reminded Council that the new board would consist of representatives from Rappahannock County, Fauquier County, Prince William County, the City of Manassas, Manassas Park and Loudoun County. She advised that they would start with only four representatives from Loudoun County, with the County having an advisory committee to assist them. Ms. Shea noted that, at her suggestion, the Action Board agreed that the current committee would serve as the advisory committee on a temporary basis. She reported that she has been asked if she would serve as a representative from Loudoun County. Ms. Shea explained that she told the Board this would be a Council decision as to whether they wanted to invest a Councilmember's time for this activity. She advised that her recommendation was that it would be good to keep this public aspect to the Loudoun portion through the formation of this new entity. Ms. Shea reiterated that it would be up to the Council to decide if they wanted her to invest the time. Councilmember Murdock asked whether Councilmember Shea was recommending that she serve. Councilmember Shea confirmed that she should, on a temporary basis for at least a year to get through the formation of the new board. She suggested that this be re-evaluated at that time. Council agreed with Councilmember Shea's recommendation. Councilmember Murdock asked whether Councilmember Shea was willing to serve in this capacity. Councilmember Shea advised that she was willing to do so for a year and then evaluate it further at that time. She noted that this would allow the Town to know about funds and programs that were available for low income residents.

Action Items (non-public hearing related) –

Council Approval – Ordinance to amend and re-enact Town Code Chapter 89 pertaining to parking

Police Chief Webber advised Council that there were a couple of minor changes that were proposed to the ordinance this afternoon. He further advised that these changes were reflected in the revised proposed motion before Council. Chief Webber noted that members of Council have also spoken with the Town Clerk regarding minor changes. Town Clerk North confirmed that Councilmember Snyder offered minor grammar changes following the work session. She noted that those changes were included in the draft ordinance in the agenda packet. Ms. North advised that the two changes that were not included in the draft ordinance were identified in the revised proposed motion.

Councilmember Patterson noted that she was not at the work session when this item was discussed. She asked what was meant by the term "alley" in Section 89-3(C). Councilmember Murdock expressed her opinion that it would have to be a public alley in order for the ordinance to apply. Police Chief Webber advised Council that there were just a few alleys in Town; and, suggested that most were private. He noted that the alley by the Back Street Café was public. Chief Webber confirmed the ordinance referenced public alleys.

Mayor Davis noted that Section 89-15(B) talked about parking meters that were on Washington Street, west of The Plains Road; and, advised that there were no meters at this location. Police Chief Webber and Town Clerk North explained that this was one of the changes proposed in the revised motion; and, advised that "The Plains Road" was proposed to be changed to "Pickering Street" to address the parking meters in front of Market Salamander.

Councilmember Littleton moved, seconded by Councilmember Snyder, that Council approve the following amendments to the draft ordinance: (1) change the language in Section 89-15(B) to read that the eight hour parking meter zone shall apply to “Washington Street located west of Pickering Street”; and (2) change the language in Section 89-18.2 to indicate that the meter fee shall be \$1.00 for two hours in the two-hour zones. Councilmember Littleton further moved, seconded by Councilmember Snyder, that Council amend and re-enact Chapter 89 of the Town Code, entitled “Stopping, Standing and Parking”, as set forth hereafter, with the effective date and time of 12:01 a.m., March 12, 2010.

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)

Councilmember Snyder expressed his opinion that the staff did a good job in updating this ordinance.

Chief Webber reported that he received a call from the Fire Chief regarding the opening of the fire hydrant at Windy Hill last night. He noted that some of the volunteers took it upon themselves to hook up to the hydrant, even though they had been told not to, in order to conduct a training exercise in the parking lot. Chief Webber advised Council that the Fire Chief was very apologetic. He noted that the Chief just found out about the incident; and, agreed to take the necessary steps to prevent a repeat. Vice Mayor Kirk asked whether the Department was staffed with paid firefighters at all times. Chief Webber confirmed that the paid firefighters manned the station twelve hours/day, while the paramedics were there twenty-four hours/day. He reiterated that the volunteers were told they could not use the hydrant; however, they disregarded orders. Vice Mayor Kirk expressed her opinion that the volunteers were very quiet during the training exercise, as they did not wake her.

Councilmember Murdock expressed her opinion that a lot of water was used. Town Attorney Whiting reminded Council that the Town could always send the Fire Department a bill for the water used when they disregarded the agreement. Councilmember Snyder suggested the Town tell the Fire Department that the Council would consider billing them for the water used during non-emergency events if this continued. Councilmember Murdock asked how the Town would meter the water. Town Administrator Schiro expressed his opinion that this was a slippery slope. Councilmember Shea expressed her opinion that this item was addressed through the Police Chief’s call to the Fire Chief. Councilmember Snyder noted that if this situation arose again, he would be in favor of charging the Department. Town Administrator Schiro advised Council that he and Chief Webber have each met with representatives from the Fire Department several times over this issue. He expressed his opinion that they were trying to control it; however, someone else was not following orders. Mr. Schiro noted that this was the first time this had happened in quite a while. Mayor Davis noted that the reason she called the Town Office was that she was concerned that there could be a water line break. She advised Council that the water was really discolored. Ms. Davis reiterated that she was concerned that there could be a problem. Town Administrator Schiro reiterated that the hydrant that was opened was located behind the Fire Department. Economic Development Coordinator Pearson expressed surprise that no other calls were received regarding brown water.

Vice Mayor Kirk asked whether the Police Chief had the names of the individuals involved. Chief Webber confirmed he did. He advised that, as it was explained to him, the person in charge was not feeling well; and, the volunteers wanted to do practice drills. Chief Webber further

advised that the individuals involved knew they were not supposed to use the hydrant; however, they did not feel like getting in the truck and driving to the authorized hydrant. Vice Mayor Kirk suggested that if the Police Chief knew the individuals that he should mention this incident to them; and, ask them to not repeat it. Chief Webber reported that the Fire Chief has already spoken with the individuals involved.

Council Approval – Resolution of Support – Journey Through Hallowed Ground Partnership’s Civil War 150th Living Legacy Program

Councilmember Murdock inquired as to the number of trees that would be planted. Mayor Davis confirmed it would be 620,000. She suggested they would be very small saplings.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve a resolution of support for the Journey Through Hallowed Ground Partnership’s Civil War 150th Living Legacy Program.

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 Appointment – Pink Box Advisory Board

Councilmember Murdock moved, seconded by Councilmember Shea, that Council appoint Linda Platt to the Pink Box Advisory Board to fill the unexpired term of Audrey Bergner, said term to expire December 31, 2011.

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)

Councilmember Murdock asked who updated the Town’s webpage; and, noted that some of the committee members’ terms were shown as having expired in 2009. Economic Development Coordinator Pearson confirmed that she and the Town Clerk updated the website. She explained that the Town recently experienced a problem in that an older web page was being displayed as opposed to the newer one; however, she noted that this has been corrected.

Discussion Items

Location of Bluemont Concert Series

Economic Development Coordinator Pearson reported that she spoke with representatives from the Community Center who were agreeable to using their location for the Bluemont concerts. She noted that the dates for most of the Saturdays in July were available. Ms. Pearson advised Council of the need to provide an extra porta-potty on the site; and, noted that the Town would be responsible for trash pick-up. She confirmed that Bluemont could connect to the electric service for both the Library and Community Center.

Councilmember Snyder advised that he wanted to make sure the dates were committed to by the Community Center for the concerts if the Council agreed to move them. Economic Development Coordinator Pearson confirmed they were. Councilmember Snyder noted that, given the Town's budget situation, he was hesitant to push for Bluemont's preferred location, as it would cost the Town at least \$1,000 and would potentially impact businesses. He expressed his opinion that moving the location would give businesses the opportunity to find out if the concerts had an impact on them or not. Mr. Snyder reiterated his opinion that the Town needed to make sure it nailed down the dates for the concerts with the Community Center. Mayor Davis asked whether the Council needed to vote on the location change. Councilmember Snyder expressed his opinion that they did not. Councilmember Shea reminded Council that they took a straw poll during the last meeting; and, agreed the Community Center would be the new location.

Options for addressing non-conforming issues associated with the Community Center

Town Planner Beniamino advised Council that the Community Center was a non-conforming use; and, explained that it was located in a residential zone that did not allow for community centers. He noted that there have been several issues over the past couple of years due to this non-conforming status and the lack of flexibility in the ordinance. Mr. Beniamino advised that the Planning Commission has discussed two potential solutions. He noted that a special use permit was originally discussed; however, the staff later found this would not work because there were specific requirements for that in another section of the ordinance. Mr. Beniamino reported that there were still two options that could be considered. He advised that the first option was to create a special exception provision that would allow community centers, but not by right. Mr. Beniamino noted that the danger was that someone like the Fire Department could want to do this as well. He reminded them that the Fire Department wanted to have community center type uses in their building two years ago; and, was denied. Mr. Beniamino reported that the second option was to rezone the Community Center property; and, advised that, if rezoned, the Town would still have to create a special exception situation in whatever district it was rezoned to. He noted that there was no definition for a community center in the ordinance.

Town Planner Beniamino expressed his opinion that it was important to recognize that the Community Center was dealing with a desire to bring in independent vendors to have events that were not for non-profit purposes. He suggested that the issue was that these special events could compete with Town businesses that pay taxes. Mr. Beniamino noted that under a special exception, the Town could place conditions on the permit. He advised that the question was whether the Council would rather keep the Center in a residential zone; and, allow for a special exception. Mr. Beniamino suggested that even if the Fire Department said it wanted a special exception permit in the R-2 District, the Town could use the Levis Hill House's location as a defense for why it would not be a compatible use. He noted that the Community Center owned property around the building; and, suggested the Town would not have to grant a special exception to everyone who requested one. Mr. Beniamino asked whether the Council was interested in rezoning the property. Councilmember Snyder asked about the idea for a rezoning.

Vice Mayor Kirk suggested that the first question the Council needed to ask was whether they wanted the Community Center to have events that competed with Town businesses. Town Planner Beniamino agreed this was an important first question. He noted that they have been operating thus far as a non-conforming use; therefore, they could continue to do what they have been doing. Mr. Beniamino reiterated that they have been operating by having non-profit organizations sponsor events, with the profits going to a 501(C)3 entity. He advised that the latest incident involved a for-profit business that wanted to have an event, with some of the money raised being donated to charity. Mr. Beniamino expressed his opinion that this was more of a for-profit operation. He advised that there were several ways the individual could have addressed this situation; and, noted that the Community Center wanted to start this discussion.

Mr. Beniamino reiterated his suggestion that the Town could create a new zoning classification for community centers. Councilmember Snyder expressed concern that if the Town rezoned the property to commercial, the Community Center could then sell its adjacent property as commercial property. He suggested the Town could have an unintended result. Town Planner Beniamino expressed his opinion that the Town did not need to rezone all of the properties. He noted that they could also heavily proffer the rezoning so the Center could not be sold and turned into a store. Councilmember Snyder advised Council that if they did rezone the property, he wanted these concerns addressed.

Mayor Davis asked what was different now. She noted that, for years, they have had someone come in on an annual basis to sell clothing and gifts. Economic Development Coordinator Pearson advised Council that that particular individual started her sales at the Hill School years ago in order to give them the profits. She noted that this was how that individual was allowed in the Community Center. Ms. Pearson reported that that particular individual purchased a \$500 itinerant vendor license from the Town. Mayor Davis asked whether the vendor qualified simply because they gave a portion of their proceeds to charity. Town Planner Beniamino advised Council that unless someone asked a question, the staff just renewed their existing license. He suggested this may be the reason he didn't see them.

Mayor Davis noted that these individuals did not pay taxes on their sales. Town Treasurer Wheeler confirmed they did not pay her sales tax. Councilmember Murdock asked about the Christmas in Middleburg vendors. Mayor Davis noted that the Community Center sponsored that event. Town Planner Beniamino noted that the Community Center could sponsor events, which made them a charitable event. He further noted that they could also have a school sponsor the event. Mr. Beniamino noted that he was leaning toward allowing individuals to use the facilities; however, they were still a non-conforming use, which could cause problems in the future. He expressed his opinion that it was important to the Town to get them out of the non-conforming use category.

Councilmember Snyder explained that this was why he pounced on the idea of a rezoning. He suggested this was the only real solution unless the Council created an exception in residential districts, which he believed was unwise. Mr. Snyder suggested the Town would be better served to approach this issue through a rezoning and the creation of a new zoning district.

Vice Mayor Kirk reiterated her question as to whether this was something the Council wanted to allow the Community Center to do. Councilmember Snyder expressed his opinion that the sale of items by for-profit vendors was immaterial as the Center would still have a zoning issue. Vice Mayor Kirk expressed her opinion that before the Council decided how it wanted to proceed on the issue of zoning, it needed to decide the other question.

Town Planner Beniamino advised Council that the Town could use a commercial zone that was heavily proffered. He further advised that they could create an institutional zone, which could include the Town Offices and parks. Mr. Beniamino expressed his opinion that the latter would allow for more flexibility than a commercial district. He asked whether the Council wanted to allow the Center to be able to sell items; and, suggested that if not, they should stop thinking about a commercial zoning classification. Mr. Beniamino expressed his opinion that it would be simpler to create a new zoning district for institutional types of uses. Councilmember Snyder urged caution; and, suggested the need to keep things narrow. He noted that there was open space behind the Town Offices; and, advised that he would not enjoy having it open to commercial uses.

Councilmember Littleton suggested the Council ask the Planning Commission to look at this issue. Councilmember Shea noted that they did discuss it; and, wanted the Council's thoughts. Town Planner Beniamino reminded Council that they would not be telling the Planning Commission what to do; however, they would be providing their feelings on the issue. Councilmember Murdock asked why the Community Center would want a rezoning. She further asked how it would benefit them. Town Planner Beniamino explained that if they were allowed to bring in private individuals, it could increase their revenue by allowing them to rent the space on the weekends. He advised Council that their non-conforming status could impact the Center if they wanted to expand or do activities that they were not currently doing. Mr. Beniamino noted that if they stopped a current use for more than two years, they would lose the ability to do it in the future.

Councilmember Snyder expressed his opinion that rezoning the property would allow the Town to protect the Community Center; and, would allow the Town to identify what was and was not a community center. He suggested it would solve two problems at once. Mr. Snyder reiterated that it would help the Center by protecting them; and, would protect the Town. Councilmember Murdock expressed her opinion that the Town needed to protect the purpose for which the Center was built. Town Planner Beniamino advised Council that the Town could leave things as they stood; however, he suggested they could have problems in the future. He recommended they be solved now. Councilmember Snyder expressed his opinion that being non-conforming could make it very expensive if the Center ever wanted to improve their facilities. Councilmember Murdock noted that the Center was not "oozing" in profits. She further noted that it existed for the community. Ms. Murdock advised that she did not want the Center to be hurt. Councilmember Snyder agreed that it was a public asset that needed to be protected.

Town Planner Beniamino advised Council that the Community Center's Board of Directors must approve a course of action; and, noted that the Town had not received an application from them. He explained that he needed to tell them what both bodies have said; and, noted that they could submit an application for something different.

Vice Mayor Kirk asked Mayor Davis how she felt about this as a business owner. Mayor Davis suggested this would depend upon the merit of what came into the facility. She noted that when an individual came in with her show, there were businesses that were not happy as they sold the same things. Ms. Davis reminded Council that the Town could not pick and choose who would use the Center. Councilmember Snyder suggested the Council would be looking for guidance on how this would impact businesses.

Councilmember Shea suggested the Council approach this as to what they needed to do with regard to a rezoning or special exception permit. She further suggested that they could say to the Center that the Council would like for them to look at how what they offered to the public would interface with the business community. Ms. Shea expressed her opinion that these were two different issues. Town Planner Beniamino suggested the Town could allow the Center to have xxx permits per year administratively; and, noted that this would limit the impact on surrounding businesses. Town Attorney Whiting confirmed the Town could set up that type of structure. She reminded them, however, that when the Loudoun County Zoning Administrator was asked to rule on what was a special event and what was inherently a part of a resort, he backed down on the number of special event permits that were needed. Ms. Whiting suggested the Town could set up something along that line. Town Planner Beniamino reminded Council that if Salamander had special events, they must get a permit from the Zoning Administrator; and, noted that there were conditions that must be met. He explained that if they broke one condition, it could impact their ability to have future events.

Mayor Davis advised Council that she did not want to tie the Community Center's hands so it was not good for them or the Town. She suggested that if they planned on doing more commercial activities, it would concern the businesses. Ms. Davis reminded Council that a couple of years ago, they talked about why vendors were not paying sales tax when everyone else must pay them. Town Planner Beniamino noted that there was a difference between the special events that did not benefit the Town and something like the Christmas Shop. He advised that he could work to see if there was a way to fix that; however, he noted that the Town would not want to punish those that were bringing in business to the Town.

Town Attorney Whiting asked why these vendors were not collecting taxes; and, suggested this may be an enforcement issue. Mayor Davis noted that they were collecting sales tax; however, the Town was not getting a percentage of their sales. Town Attorney Whiting reminded the Council that the Town did not receive the sales taxes directly. Mayor Davis reiterated that the Town was not receiving a percentage of their sales. Town Attorney Whiting suggested this may be because they were itinerant vendors. She noted that the Town had no control over this as it was State law. Ms. Whiting advised that if the vendors were not collecting taxes and sending them to Richmond, they did not have an exemption just because they were itinerant. Vice Mayor Kirk noted that when she purchased something from a vendor, she paid sales tax. Town Attorney Whiting reminded Council that the locality in which the vendor secured a business license would be getting the credit for the sale and thus receive the sales tax revenues.

Vice Mayor Kirk asked who the staff was talking with regarding the Community Center. Town Planner Beniamino advised that he was talking to Tim Clites, who served on their Board. He advised that the woman who asked about doing an event did not come back to get a permit.

Councilmember Murdock asked whether a consignment shop could be held at the American Legion. Town Planner Beniamino confirmed it could not. He explained that the only reason the Community Center was allowed to do what it did was because it was an existing non-conforming use that has been continuously operating. Councilmember Murdock asked whether the rezoning plan could include the American Legion. Town Planner Beniamino confirmed that it would not unless the Council wanted to rezone the Legion property.

Councilmember Shea asked whether the Community Center pre-existed the residential development. Councilmember Snyder confirmed it did not. Town Planner Beniamino explained that the Community Center was here prior to zoning. Councilmember Snyder explained that the R-2 District was created after much of the land was improved. He further explained that the zoning classification was created because the Town did not want the existing properties to be out of compliance with the Town Code. Mr. Snyder suggested the Town ignored the Community Center in creating this zone. Councilmember Shea suggested it has been ignored for a long time. She expressed her opinion that it needed to be addressed in the zoning ordinance. Ms. Shea recommended the Planning Commission take a look at this item; and, advised that she agreed with the concept of the creation of a new zoning district. Town Planner Beniamino asked whether the Council had a problem with the pursuit of a new zoning classification. Vice Mayor Kirk agreed this made sense. Councilmember Littleton agreed. Councilmember Snyder urged caution in making the definition of a community center too broad.

Town Planner Beniamino advised Council that he would take the Town's discussions back to the Community Center and see what they wanted to do. He noted that they may wish to do something else. Councilmember Snyder recommended that once the Town had a response from the Community Center, the Council could refer the matter back to the Planning Commission, with their comments.

Information Items

Councilmember Murdock noted that there were two upcoming vacancies on the Town Council for which no one filed their candidacy. She asked what the Council could do about it; and, advised that she was concerned. Ms. Murdock noted that anyone could have their name written in for the positions; and, suggested an “unqualified” person could be elected to the Council. She suggested it was up to the Council to see if they could get some good candidates to run a write-in campaign. Councilmember Littleton inquired as to the deadline for filing. He asked if everyone who was up for re-election filed their candidacy. Councilmember Snyder asked Councilmembers Patterson and Plescow if they were seeking re-election. Councilmembers Patterson and Plescow confirmed they were not. Councilmember Murdock explained that this meant there were two slots for which write-in votes would have to be submitted. She reiterated her suggestion that the Council needed to think about who they could talk to about being a write-in candidate. Ms. Murdock noted that this was not up to the Council; however, she suggested it was their responsibility. Councilmember Littleton asked whether anyone had submitted to be listed on the ballot. Councilmember Shea explained that they could not submit their candidacy at this point, but rather would have to informally campaign and be willing to be a write in candidate. Ms. Shea noted that, otherwise, the public would have to write-in names. Councilmember Littleton inquired as to the number of individuals who filed to be on the ballot. Councilmember Snyder confirmed that he and Vice Mayor Kirk filed for Town Council and Mayor Davis filed for the Mayor’s seat. He noted that the Town had two uncovered Council seats. Councilmember Murdock noted that anyone could write in names. Councilmember Shea noted that she was encouraging people to run. Vice Mayor Kirk noted that she ran a successful write-in campaign. Councilmember Murdock reiterated her opinion that it was the Council’s responsibility to address this issue.

Closed Session – Personnel

Vice Mayor Kirk moved, seconded by Councilmember Murdock, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(1) pertaining to the discussion, consideration or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of the public body. Vice Mayor Kirk further moved, seconded by Councilmember Murdock, that this discussion be limited to the retirement of the Town Administrator. Vice Mayor Kirk further moved, seconded by Councilmember Murdock, 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 7:45 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk