



**MIDDLEBURG TOWN COUNCIL**  
**Regular Monthly Meeting Minutes**  
**Thursday, May 13, 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:**

Rhonda S. North, MMC, Town Clerk  
Elizabeth D. Whiting, Town Attorney  
David M. Beniamino, AICP, Town Planner  
Debbie J. Wheeler, Town Treasurer  
Steven L. Webber, Chief of Police  
Cindy C. Pearson, Economic Development Coordinator

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting on Thursday, May 13, 2010 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 6:00 p.m. She led Council and those attending in the Pledge of Allegiance to the flag.

Mayor Davis thanked former Town Administrator Jerry Schiro for being present to answer any questions Council may have related to the proposed budget. She noted that he was not present as a Town employee as he has retired.

Mayor Davis congratulated Vice Mayor Kirk and Councilmember Snyder on their recent re-elections to the Town Council. She also congratulated Councilmembers-Elect Stewart and Hazard for their election to the Council. Vice Mayor Kirk congratulated Mayor Davis on her recent re-election.

**Public Comment**

Eura Lewis, 116 N. Madison Street, thanked the Council for recommending her for service on the Board of Zoning Appeals. She noted that she had not forgotten about a Middleburg museum; and, suggested the need to start working on it. Ms. Lewis noted that money was scarce; and, advised that she was aware that the real estate taxes and utility rates were proposed to increase. She suggested that she begin by talking to the HDRC in order to get them involved in the museum. Ms. Lewis wished the new Council a successful year.

**Public Hearing** - Proposed Real Estate Tax Rate Increase

Jerry Schiro reminded Council that the real estate tax rate was proposed to increase to \$.19 per \$100 assessed value; and, noted that it was currently \$.15. He advised Council that the equalized tax rate, which was the rate necessary to generate the same revenue as last year, was \$.16. Mr. Schiro explained that the proposed budget demanded an additional \$.03 as other General Fund revenues have diminished. He noted that some of the funding received from the State had also been reduced; and, as a result, the Town fell back on the real estate tax to make up the difference. Mr. Schiro reminded Council that last year the real property values in the town saw a reduction of fourteen percent, followed by another seven percent this year. He noted that the Town worked hard last year to hold the line; and, did not increase the tax rate. Mr. Schiro explained that the additional seven percent property value reduction and the other declining revenues necessitated the proposed increase. He noted that the Town sent out a flyer on the budget and process. Mayor Davis noted that copies of the flyer were available. She advised that the budget process was not an easy one; however, she expressed her opinion that the flyer explained it well.

No one spoke and the public hearing was closed.

**Public Hearing** - Ordinance to amend the Schedule of Water and Wastewater Charges to revise Water and Sewer Charges and Availability Fees

Jerry Schiro advised Council that the utility budget necessitated a six percent increase in the user rates and availability fees. He reminded them that three years ago, they initiated a program to get the utility budget and expenditures on an even keel; and, explained that they have been implementing the increases in order to keep up with the utilities' operational costs and unfunded State mandates that have been placed on the system. Mr. Schiro noted that Middleburg must meet the same criteria as larger municipalities; and, explained that it was difficult to fund an operational budget with a small group of users. He reminded Council that the Town only had four hundred utility customers. Mr. Schiro reiterated that the Town must spread the operational costs and the cost for any capital/repairs that were necessary among this small group. He expressed hope that when the Salamander Resort came on line, it would stabilize the rates; and, possibly even allow the Town to reduce them. Mr. Schiro reiterated that the utility increases were necessary to meet mandates and operate the system.

No one spoke and the public hearing was closed.

**Action Items related to Public Hearings**

**Council Approval** - Setting of Real Estate Tax Rate

*Councilmember Littleton moved, seconded by Councilmember Murdock, that Council set the real property tax rate for the Town of Middleburg at \$.19 per \$100 assessed value for the fiscal year ending June 30, 2011.*

Councilmember Snyder advised Council that he would like to explore the possibility of lowering the tax rate to \$.18 or \$.185. He asked for input from Mr. Schiro on the impact of doing so to the budget. Mr. Schiro reminded Council that each penny on the real estate tax rate generated \$23,000. He explained that in order to reduce the rate by a penny, the Council must reduce the General Fund budget by that amount. Mr. Schiro advised that if they proposed a one half cent decrease, they would have to reduce the General Fund by half that amount. He reminded them that the proposed budget was a "bare bones" one. Mr. Schiro noted that there was some funding in the Contingency Reserve to give the Council some flexibility in hiring a new Town Administrator. He further noted that there was some mention of a small cost-of-living-allowance

for the employees. Mr. Schiro advised that other than the contingency reserves, he did not see any areas for reduction. He explained that even though the rates were proposed to increase, this was to make up for the lost revenues from other General Fund sources. Mr. Schiro further explained that the General Fund's operational budget was still lower than last years. He reiterated that the rate increase would not increase the General Fund budget, as it was just making up for lost revenue.

Councilmember Snyder reiterated that he would like to cut the rate a little, even if it were just half a penny. Mr. Schiro advised Council that he would change the budget to reflect whatever rate they set. He noted that the Council was the policy setters and set the tax rate.

Councilmember Snyder noted that the Town was good at being conservative in terms of budgeting expenses versus revenues; and, advised that Mr. Schiro has done an excellent job over the last three years in this regard. He expressed appreciation for this. Mr. Snyder noted that things were tight and situations were tough; and, reiterated that he would like to cut the proposed rate by half a penny for the residents and owners of real estate in town.

Vice Mayor Kirk asked what a half a penny would look like to the average homeowner. Councilmember Patterson expressed her opinion that it would be \$25, based upon four hundred tax payers to fund the \$23,000. Councilmember Snyder agreed it was not a lot of money. Councilmember Shea reminded Council that they talked long and hard about the proposed increase. She suggested that because the Council had not raised taxes for the past two years, it must make a substantial increase. Ms. Shea recommended the Council not cut itself off any more for the next year. She further recommended that the Town continue to work with a bare bones budget and examine where it was spending money. Ms. Shea reiterated that the Council had not increased the real estate tax rate for two years; and, suggested it must make a substantial change.

Councilmember Snyder expressed his opinion that this was the first year the Town has lowered its overall budget.

Councilmember Littleton suggested the Council must consider that most real estate assessments have been reduced, particularly the residential ones. He noted that a lot of tax bills would still decrease due to the substantial reduction in property values. Mr. Littleton expressed his opinion that the residential tax bills would not increase.

Councilmember Snyder agreed; however, he reiterated that businesses and residents were struggling. He suggested that if the Council could give them a little slack, he would like to consider doing so. Mr. Snyder noted that he was willing to be over-ruled; however, he wanted to raise the issue for discussion.

Councilmember Littleton reminded Council that they spent a lot of time going over the budget; and, noted that this was not a decision they came by lightly. He expressed his opinion that the Council would be doing the employees and residents a disservice to cut services it said it would provide. Mr. Littleton noted that the departments were all operating at a bare bones minimum.

Vice Mayor Kirk reminded Council that they discussed charging for trash collection. She noted that she hated to raise anything; however, the budget was tight and must be balanced. Ms. Kirk advised that she did not know how to do that without a \$.19 tax rate.

Councilmember Snyder advised Council that he would go along with them; however, he would like to consider lowering the rate next year in the budget process. He advised that during his tenure on Council, the rate had gone from \$.10 to \$.19. Councilmember Patterson noted that Councilmember Snyder had been on Council for twelve years. Councilmember Snyder advised that he did not want to leave office with a rate of \$.25.

Mayor Davis reminded Council that when compared to other towns in Loudoun County, Middleburg's rate was lower. She noted that Middleburg offered services that others did not, such as the Town of Hamilton that had no police force. Mr. Schiro confirmed that Middleburg's rate was lower than the others. Mayor Davis reiterated that Middleburg offered services the others did not. She expressed her opinion that the Council was still giving the residents a fair deal.

Councilmember Snyder noted that he did not disagree; however, he would like to find the opportunity to go back to a \$.10 rate. Mayor Davis noted that everyone hoped it could be lower; and, advised that this was the point of working with the budget.

Councilmember Murdock noted that other towns have not given their employees a cost-of-living increase; however, she suggested that going a couple of years without a pay increase was hard on people. She expressed her opinion that while it was better to have a job than not, she would love to see money available in the contingency reserve that could hopefully be used to phase in a COLA. Vice Mayor Kirk noted that the Town had good employees that did not get a lot. Mr. Schiro confirmed this was true; and, noted that the employees have only received a 1.5% pay increase over the last three years. Councilmember Murdock suggested the one-half cent would help toward that goal.

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

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**Council Approval** - Ordinance to amend the Schedule of Water and Wastewater Charges to revise Water and Sewer Charges and Availability Fees

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

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

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**Approval of Minutes**

*Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the April 5, 2010 Work Session Meeting minutes, the April 8, 2010 Regular Meeting minutes and the April 22, 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)

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### **Staff Reports**

Councilmember Murdock noted that the Police Department had been writing traffic summonses. She further noted that they wrote one hundred four traffic summonses this month versus sixteen in April of 2009. Ms. Murdock advised Council that they also wrote two hundred seventy-two parking tickets last month versus one hundred thirty one in April of 2009. She asked how much money this represented. Chief Webber advised Council that it was hard to estimate; however, he would put it in the thousands of dollars. Vice Mayor Kirk noted that the value of damages due to stolen and lost property was down significantly this year. Chief Webber advised Council that this figure included motor vehicle accidents. Councilmember Shea asked whether it would have included the thefts associated with the break-ins that occurred last year. Chief Webber confirmed it would.

Mayor Davis asked how the Farmer’s Market was going this season. Economic Development Coordinator Pearson confirmed it was going very nicely. Councilmember Murdock asked Ms. Pearson to explain how the cache at the Pink Box would work. Economic Development Coordinator Pearson explained that it was a geo-caching program; and, advised that Bonnie Deal planned to speak to the Pink Box about participating. She noted that it had not yet been approved. Ms. Pearson explained that this would involve the installation of a small box that would be plugged into an electric outlet on the outside of the building. She further explained that participants would go on-line; and, noted that people from around the world participated in geo-caching. Mayor Davis expressed her opinion that it was a form of a treasure hunt. Economic Development Coordinator Pearson confirmed that they would stop at the Pink Box and learn information about Jackie Onassis. Town Planner Beniamino explained that the geo-caching box provided a signal for participants to find.

Town Planner Beniamino reminded Council that during the work session, they discussed the outdoor display of merchandise on sidewalks; and, at that time, asked him to draft a letter explaining to the business owners that the Town had received complaints. He noted that the Town did not own the sidewalks; and, that they were under VDOT’s control. Mr. Beniamino explained that the letter thanked the business owners for voluntarily complying with the ordinance that banned such displays. He reminded Council that the Town would have to bring legal action against those that did not.

Town Planner Beniamino advised Council that since the work session, he received two letters regarding this issue – one from Ben Wegdam of Lou Lou’s and one from Howard Armfield, who included Leesburg’s ordinance allowing such displays. He explained that the difference between Middleburg and Leesburg was that Leesburg owned its streets and sidewalks. Mr. Beniamino advised Council that in response to these letters, he contacted Howard Massie of VDOT to discuss their regulations that prohibit the Town from enacting ordinances to allow this type of behavior. He explained that VDOT stated that sidewalk sales were permitted in special situations; and, advised that the Town could get a permit for a larger event. Mr. Beniamino noted that the Town would have to secure a permit for everyone that wanted to display their wares for sale on the sidewalk.

Town Planner Beniamino reminded Council that the conclusion of the work session discussion was that he and Chief Webber would present a letter to the business owners explaining the rules and asking for voluntary compliance. Councilmember Murdock noted that the letter talked about the ordinance; and, suggested it did not address the issue. Town Planner Beniamino explained that a clothes rack was a structure by definition. Councilmember Murdock asked about a basket. Town Planner Beniamino confirmed this would also be a structure by definition.

Vice Mayor Kirk asked about the sandwich board signs. Town Planner Beniamino confirmed they were also structures. He reminded Council that when they adopted the ordinance allowing sandwich board signs on the sidewalks, he advised them that this was against VDOT's regulations. Councilmember Murdock asked how the Town could allow sandwich board signs on the sidewalk, but not flower pots. Town Planner Beniamino advised Council that VDOT only allowed real estate signs in the right-of-way. He further advised that the Town's ordinance regarding sandwich board signs was not in compliance with VDOT's regulations.

Councilmember Murdock asked whether the Town would be liable if a citizen fell over something on the sidewalk on VDOT owned property. She suggested that if this theory applied to a basket, it would also apply to a sandwich board sign. Vice Mayor Kirk asked whether the Council needed to clean up everything. Town Planner Beniamino expressed his opinion that the Town could be liable if someone was hurt due to an obstruction on the sidewalk. Vice Mayor Kirk noted that it could also be liable if a brick was out of line. Town Attorney Whiting cautioned Council that there was a difference between being sued and being liable. She suggested the Town did not help its case by enacting ordinances that allowed encroachments. Ms. Whiting noted, however, that the ordinance would not bind VDOT in any way. She advised that the Council also occasionally approved an encroachment ordinance; however, she noted that they conditioned those ordinances so they did not waive VDOT's rights. Ms. Whiting explained that a lot went into liability; however, she reiterated that the Town did not make its case better by regulating something that was under the control of VDOT. She advised that not all injuries resulted in a plaintiff's verdict; and, explained that in the case of a trip and fall, the Town may be held to be contributory negligent but not liable. Ms. Whiting suggested that the bigger injuries would be challenged and the loss passed off to a defendant.

Councilmember Murdock advised Council that she attended the Bizz Buzz meetings earlier in the week; and, talked to business owners about this issue. She noted that they told her that they would lose money if they had to clean up the streets so no items were displayed outside. Ms. Murdock advised Council that the merchants told her they could not afford to lose any more revenue. She suggested the Town was in an awkward position as she did not know how it could come down on businesses and address this problem. Ms. Murdock advised Council that she was told that the HDRC was stringent on the installation of mullions in windows and that, as a result, people could not see into the windows to see the merchandise. She expressed her opinion that this item needed to be revisited. Ms. Murdock noted that Middleburg was historic; however, she advised that the Town was mixed with some windows being plain and others having mullions. Ms. Murdock reiterated her suggestion to revisit this item. She expressed her opinion that one way to help the stores on the ground level was to let them remove the mullions. Vice Mayor Kirk noted that this would not address the issue before Council. Councilmember Murdock expressed her opinion that it would provide a carrot.

Vice Mayor Kirk asked whether the sandwich board sign ordinance was about the size of such signs as opposed to allowing them. Town Planner Beniamino confirmed that it addressed the size and number of signs; and, allowed them in the public right-of-way. He reminded Council that the same argument regarding damage to businesses was made during the sandwich board sign ordinance discussion. Mr. Beniamino suggested it was difficult to balance the business community versus the historic district; however, he advised that studies have concluded that there

were economic benefits associated with being in a historic district. He expressed his opinion that some property owners made nice signs and improvements to their buildings only to have an individual put something in front of the building that detracted from its appearance. Mr. Beniamino advised Council that the HDRC did have a discussion with the owners of the Chinn's Crossing Project who had client that wanted to go into the building and wanted the mullions removed. He explained that the HDRC said the mullions needed to be in the windows unless the owner could say the business would be xxx. Mr. Beniamino advised Council that the business then "backed off". Councilmember Littleton advised Council that this was not true; and, expressed his opinion that the business wanted an excuse to back out. He suggested it was not going to locate there anyway; and, reiterated that he did not truly think the mullions were the reason they did not go into the building.

Councilmember Shea noted that Councilmember Murdock suggested the Town needed to offer a carrot because the windows did not attract customers. She disagreed; and, noted that the businesses have done no surveys or presented any proof that customers were not coming into the stores due to the windows. Ms. Shea suggested the businesses were desperate. She advised that she understood that and would like to help them; however, basing this on small windows was not true. She noted that she drove through the town at night and walked during the day; and, advised that her concern was that pedestrians could not get down the sidewalks. Ms. Shea reminded Council that most sidewalks consisted of a single path. She noted that the Town could remove the trees from them to widen the sidewalks, but it would not because they were a part of the town. Ms. Shea expressed her opinion that the Town could not afford to have encroachments on the other side of the sidewalk. Vice Mayor Kirk agreed. Councilmember Shea suggested the need to do all the Town could to support businesses; however, she suggested that making it harder for pedestrians to walk on the streets would not help them.

Mayor Davis noted that there were locations around town where the stores had private sidewalks. She asked whether it was legal to place merchandise for display on those sidewalks. Town Planner Beniamino confirmed it was as long as the business went through the proper process. Mayor Davis reiterated that some stores were far enough off the right-of-way that they had room for the outdoor display of merchandise. Town Planner Beniamino advised Council that the right-of-way for Washington and Madison Streets was sixty feet. He noted that most of the buildings would be right at the street. Mr. Beniamino suggested the need to measure each property to determine this; however, he reiterated that for the most part, everything was in the right-of-way.

Mayor Davis expressed her opinion that different people had different tastes. She noted that some thought it was nice to see merchandise outside, while others did not. Ms. Davis advised that she did not know if taste could be legally defined.

Councilmember Snyder reminded Council that they were talking about someone else's space that did not allow the encroachments. He suggested that anything the Town allowed would go against VDOT's regulations.

Councilmember Shea recommended the Council encourage the businesses to have more than one sidewalk sale per year if they wanted to display merchandise. She noted that they would have to go through the permit process with VDOT. Ms. Shea expressed her opinion that the Council could not change the rules as they were not the Town's to change. Vice Mayor Kirk agreed. She noted that some of the sidewalks consisted of a single lane; and, noted that people had to push strollers into the streets. Councilmember Snyder noted that the Town coordinated the sidewalk sale; and, suggested it could do so more often. Councilmember Littleton expressed his opinion that the bottom line was that these were not the Town's streets.

Councilmember Patterson asked whether the Town would have to remove the planters from the right-of-way. She suggested that doing so would destroy the downtown district. Town Planner Beniamino advised Council that he did not ask about planters; although, he noted that he and Mr. Massie have talked about the site distances issues associated with them. Vice Mayor Kirk suggested the Council could not ask the businesses to follow a regulation that it was not following. She further suggested that the Town must lead by example. Town Planner Beniamino advised Council that he would ask VDOT about the planters. He expressed his opinion that outdoor displays were a form of signage in that they attracted visual attention. Mr. Beniamino advised Council that the HDRC has discussed the concept of historic districts versus signage. He noted that Fairfax allowed signs in its rights-of-way; and, asked whether anyone ever shopped at one of those locations due to seeing a sign. Mr. Beniamino suggested the business community would always argue that more signs attract shoppers; however, others say the opposite. He reiterated the economic benefit of being in a historic district.

Councilmember Patterson suggested the Town was in a funny position. She noted that it had received complaints saying the displays were distracting; however, following the ordinance would mean the Town must remove the green items that added to the downtown district. Ms. Patterson advised that she did not like seeing merchandise on the street; however, if the Town told someone to remove their merchandise, they would then ask the Town to remove the planters. She suggested that if the Town went after one person, they must take everything off the streets. Town Planner Beniamino advised Council that he would look into the regulations further as VDOT may have different regulations for green items. Jerry Schiro expressed his opinion that the difference was that the businesses were doing commerce on a public right-of-way. Councilmember Snyder suggested the need to investigate the regulations further. Vice Mayor Kirk asked the Town Planner to seek clarification from VDOT. Councilmember Patterson noted that she received a call from Mr. Wegdam, who understood the difference between what was excessive and not. She advised Council that he was willing to serve on a committee regarding this matter to make things work for businesses. Ms. Patterson suggested the need to understand what would happen when they pointed fingers in that the Town would get stuck in the back and forth between merchants. Councilmember Snyder expressed his opinion that a quick conversation with VDOT would clear up this issue. He suggested that after doing so, the Council could then continue pursuing the course discussed during the work session.

Mayor Davis suggested this item be placed on the upcoming work session agenda for further discussion. She further suggested that the staff hold off on delivering the letter until that discussion occurred. Town Attorney Whiting advised Council that there may be an alternate approach with regard to the street planters. She noted that the Town did own its own street light poles; and, suggested they could attach planters to those poles as long as they did not encroach into VDOT's clearance zone. Councilmember Patterson noted that she was talking about businesses that had planters by their doors; and, suggested there were lots of those. Vice Mayor Kirk suggested the staff get clarification from VDOT on the regulations. She further suggested that VDOT be present for the work session if possible. Councilmember Shea suggested that the staff also check to see if the planters could be displayed on the buildings without interfering with the right-of-way. Councilmember Littleton suggested that, for now, if the businesses had four feet of right-of-way in front of their stores that they be left alone. He noted that some locations did not have four feet, which was a hazard to pedestrians. Councilmember Snyder suggested that nothing be done until the staff received more information. He noted that a two week delay would not hurt anything. Town Planner Beniamino advised Council that an individual setting up shop on the sidewalk was a real possibility. He suggested it would be difficult to shut them down. Mr. Beniamino expressed his opinion that these vendors would present the same argument as Councilmember Patterson in that it was not Town property. Councilmember Shea moved that the Council table this discussion to the next work session. Vice Mayor Kirk reiterated that if a representative from VDOT wanted to attend the work session, it would be good.

Town Attorney Whiting reported that she was asked by the Town Planner to be prepared to discuss the recent General Assembly provisions allowing for temporary family structures; and, advised that she was ready to do so. Councilmember Snyder expressed an understanding that the legislation adopted by the General Assembly superseded local zoning ordinances. Town Attorney Whiting confirmed it did; however, she expressed her opinion that it may be revisited in the future. She advised Council that the temporary structures must meet setback requirements as an accessory structure; therefore, they could not be located in the front yard. Ms. Whiting further advised that there must be certification that someone receiving medical care, according to the definition in the statute, would reside there. She noted that this was not unique; and, explained that years ago, the General Assembly adopted legislation that said that group homes must be treated as single-family dwellings. Ms. Whiting suggested this bill was not as bad as the one the General Assembly considered that would have rewritten proffers. She reminded Council that Virginia was a Dillon Rule state, meaning that a locality's power to legislate could be modified and revoked by the General Assembly. Ms. Whiting expressed her opinion that given what the bill was intended to do, it was as generous as it could be.

Councilmember Snyder asked whether the Town could discriminate between a habitable and non-habitable structure in terms of set back or other zoning rules. He further asked whether it was possible to make it more difficult to install such temporary houses. Town Attorney Whiting advised Council that she would prefer that the Town let another jurisdiction litigate that question. She suggested that the Town see how other jurisdictions were treating this legislation. Ms. Whiting expressed her opinion that the problem was that ordinances that allowed second dwellings, such as granny flats, had different setbacks; and, noted that the Town has never gone that route. She noted that under the Town's regulations, a property could have two sets of structures – one primary and one accessory that would be allowed to encroach closer to the boundary lines. Ms. Whiting suggested there was ambiguity in the statute as to how those structures could be treated; and, explained that the legislation said they were allowed so long as they met setback requirements.

Councilmember Snyder asked whether the Town could restrict them by height, such as an accessory structure that was eight feet or less had a setback of xxx, whereas an accessory structure higher than eight feet would have a greater setback. Town Attorney Whiting advised Council that she did not see anything that exempted them from meeting height regulations. Councilmember Snyder suggested that by requiring the temporary structures to meet height requirements, the Town could make it difficult to put one in Middleburg. Town Attorney Whiting confirmed there were ordinances with a fifteen foot height limit that allowed one to get a decent one story structure on the property. Town Planner Beniamino noted that the State legislation had ambiguity; and, suggested the temporary house could be five feet off the property line. He noted that this was the fear of the zoning officials. Mr. Beniamino suggested this would prompt localities to look at their regulations regarding accessory structures. Councilmember Snyder expressed his opinion that the Town's rules for accessory structures were lenient; and, advised that he would be happy to review them.

Town Attorney Whiting encouraged the staff to stay in touch with other zoning officials to see how other jurisdictions handled this item; and, suggested that larger jurisdictions may develop guidelines that would allow everyone to be on a single check list. She advised that once qualified under the statute, she did not know how frequently people would see the structures. Ms. Whiting expressed her opinion that the odd thing about the legislation was that the person occupying the pod must be the person receiving the care. She suggested that if the person allowed in the house was unrelated, this would flunk the definition of family. Ms. Whiting expressed her opinion that this issue would not solve itself, as the legislation was not well written. She advised, however, that she would prefer that someone like Fairfax County litigate it.

Mr. Schiro advised Council that he would get the utility numbers to them as soon as possible.

### **Reports of Town Committees**

Councilmember Shea reported that she recently attended a meeting with the Fauquier County Community Action Board; and, noted that they were spearheading the formation of the regional group. She advised that this was the first time they met; and, noted that it was very intense. Ms. Shea reminded Council that they must set up the system for the region; and, advised that the Loudoun County representatives were dedicated to making sure the County received its share of the funding. She advised that after June, there would be a Loudoun County Advisory Committee rather than a board. Ms. Shea noted that they were in transition; and, everything would be new and different. She advised that the funding for this year has been recommended, with Fauquier County distributing it as it could.

### **Action Items (non-public hearing related)**

#### **Council Approval** – Resolution – Appointment of Mayor as Town Administrator

*Vice Mayor Kirk moved, seconded by Councilmember Snyder, that Council adopt a resolution appointing Mayor Betsy Davis as Town Administrator effective May 1, 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)

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#### **Council Approval** – Site Plan Waiver – Annie’s Bistro Francais

Town Planner Beniamino reminded Council that during their April work session, Annie’s sought a site plan waiver; however, the Council had questions about its ability to grant the waiver and asked the staff to speak with the Town Attorney. He explained that before this request could return to Council, Annie’s amended their request to seek a waiver of the site plan requirements in two ways. Mr. Beniamino advised Council that Proposal A was to allow the five hundred fifty square feet of first floor space to be included in the waiver. He explained that because the two existing parking spaces would meet the Town’s parking requirements for restaurants within three hundred feet of public parking and there would be no improvements to the property, the Council could grant this waiver. Mr. Beniamino advised that Proposal B was the same as A, with the addition of the use of the second floor during evening hours under a shared parking agreement. He explained that the shared parking agreement would require legal paperwork so that if the waiver was grant, the agreement could not be dissolved whenever the parties wanted. Mr. Beniamino noted that Proposal B stated that during the daytime hours, the restaurant would use the first floor only. He explained that during the later hours, they would use the eleven shared parking spaces in order to facilitate the second floor use. Mr. Beniamino noted that there was no agreement to review so the Council could not move forward with Proposal B at this time. He advised Council that Bill Brown owned the other building; and, the land on which the two buildings were situation was in the name of a condo association.

Vice Mayor Kirk asked whether Proposal B was on the table. Town Planner Beniamino explained that the applicant requested it; however, he could not recommend its approval without first seeing the paperwork. He advised that if the paperwork was presented to the Town in the future, this request may come back for a recommendation; however, as of this time, it was just an

idea that could not move forward. Mr. Beniamino suggested that if the Council was opposed to this option, it should let the applicant know so they did not go through the expense of working out an agreement. Vice Mayor Kirk noted that the Council did not reject this option during the work session, they just said they needed more information.

Councilmember Shea reminded Council of the discussion that occurred related to the Town's use of the church parking lot, at which time the church wanted to offer the lot to businesses. She asked whether this agreement would affect that item. Town Planner Beniamino explained that the church was looking to rent their spaces, which was different.

Councilmember Shea asked about the statement that no upgrades or site improvements would be required; and, noted that the use was changing from retail to restaurant. Town Planner Beniamino explained that there was a difference between interior changes to the building and upgrades to the exterior. He advised that just because the applicant needed a commercial kitchen to satisfy the County Health Department, it did not count against the Town's waiver request. Mr. Beniamino confirmed the Town had no authority over interior changes.

Councilmember Murdock asked whether the approval would be for the downstairs only. She further asked what would happen to the upstairs. Town Planner Beniamino confirmed nothing would happen upstairs. Councilmember Snyder noted that the Council would just be approving the first floor use. Vice Mayor Kirk noted that they could use the first floor as a restaurant; and, the rest for storage. Town Planner Beniamino reminded Council that the parking ordinance did not address storage. Councilmember Snyder explained that the applicant must come back to Council if they wished to use the second floor as a restaurant.

Councilmember Shea asked about the status of rezoning the property. Councilmember Snyder noted that it was not on the table. Town Planner Beniamino noted that the Council did discuss what could happen to the C-3 District during its April work session – keep it as it was or look at rezoning the property to C-2. He further noted that another option was to apply the same protections that existed for the C-2 District to the C-3 District. Mr. Beniamino reminded Council that almost all the properties south of Federal Street were in close proximity to public parking. He suggested they could refer this to the Planning Commission for discussion. Vice Mayor Kirk agreed with the need to look at all the options. Councilmember Snyder noted that this was a long term process that could take months. Town Planner Beniamino suggested they could get started. He suggested that when the new Council took office, they set up a joint meeting with the Planning Commission to discuss joint issues. Vice Mayor Kirk suggested the new members needed a couple of meetings to “get their feet wet” before scheduling such a meeting.

*Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve a request from Annie's Bistro Francais for a waiver of the site plan requirements, as allowed under Article 3, Section 3.4 of the Middleburg Subdivision Ordinance, to allow for the operation of a restaurant on the first floor at 101 West Federal Street.*

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

No – Councilmember Shea

Abstain: Councilmember Patterson

Absent: N/A

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

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Council Approval – Reduction in Planning Commission membership

Town Planner Beniamino advised Council that with the election of Kevin Hazard to the Council, the Planning Commission would be down by one member. He further advised that the issue was that the Commission was having trouble achieving a quorum; and, had to cancel three meetings in a short period of time. Mr. Beniamino reminded them that in 2007, they decreased the membership; however, they did not do so enough to address the quorum issue. He reported that the Commission recommended shrinking its membership to the lowest possible level allowed by law, which was five members including the chair, effective July 1.

Councilmember Patterson advised Council that the Commission was still required to have four of the six members present to achieve a quorum. She noted that recently a quorum could not be achieved, through no one's fault. Councilmember Murdock noted that this was affecting applicants. Councilmember Patterson confirmed that public hearings must be re-advertised when this occurred. She noted, however, that "no one was beating down the door" to apply for service. Ms. Patterson requested that if the Council was not comfortable reducing the membership that it bring it back up to seven.

Councilmember Snyder expressed his opinion that this was a good short-term solution for a year or two. He suggested that in a couple of years, more people would be interested in participating in Town committees. Mr. Snyder expressed his opinion that the Planning Commission had a good point; and, suggested the reduction was appropriate for the downturn. Town Planner Beniamino recommended that whenever the Town had people interested in serving, the Council could change the membership back to seven.

Councilmember Shea asked whether any advertisements were run for the opening. Town Planner Beniamino confirmed there were not as Mr. Hazard was just elected to the Council. He reminded them that they recently advertised for a BZA position; and, only received one application. Councilmember Snyder noted that ten to fifteen years ago, the Town had multiple applicants; however, this was no longer the case. He reiterated that this was a temporary solution; and, advised that he would like to increase the number in the future.

*Councilmember Patterson moved, seconded by Councilmember Snyder, that the Council approve a reduction in the membership of the Middleburg Planning Commission from six to five members, said reduction effective July 1, 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)

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There being no further business, a motion was made to adjourn the meeting at 7:09 p.m.

APPROVED:

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Betsy A. Davis, MAYOR

ATTEST:

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Rhonda S. North, MMC, Town Clerk