



**MIDDLEBURG TOWN COUNCIL**  
**Regular Monthly Meeting Minutes**  
**Thursday, June 10, 2010**



**PENDING APPROVAL**

- PRESENT:** Mayor Betsy A. Davis  
Vice Mayor Darlene Kirk  
Councilmember Trowbridge Littleton  
Councilmember Lisa Patterson  
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  
Steven L. Webber, Chief of Police  
Cindy C. Pearson, Economic Development Coordinator
- ABSENT:** Councilmember Catherine “Bundles” Murdock  
Councilmember Judith Pryor Plescow

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

**Public Hearing** – Special Use Permit 10-01 – Office uses on the first floor – 7 West Washington Street – McCulloch & Associates

Town Planner Beniamino explained that this was a special use permit application submitted on behalf of Middleburg Plaza, LLC for office uses on the first floor at 7 West Washington Street. He noted that the building contained several office spaces that extended perpendicular to Washington Street. Mr. Beniamino explained that this request would allow the Plaza to change the uses for these spaces from retail and personal services to office uses.

No one spoke and the public hearing was closed.

**Action Items related to Public Hearings**

**Council Approval** – Appropriations Ordinance – FY ‘11

Jerry Schiro reminded Council this was an ordinance to adopt the budget and appropriate funding for fiscal year 2011, which begins July 1. He noted that the General Fund totaled \$1,477,677; the Health Center Fund totaled \$150,200; and, the Utilities Fund totaled \$887,153.

*Councilmember Snyder moved, seconded by Councilmember Shea, that Council adopt an ordinance approving the budget, adopting the tax rates and making appropriations for the fiscal year ending June 30, 2011.*

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

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**Council Approval** - Special Use Permit 10-01 – Office uses on the first floor – 7 West Washington Street – McCulloch & Associates

Town Planner Beniamino advised Council that Councilmember Shea has suggested changes to the motion to make it clearer that there were three first floor spaces that were not located on the hallway. He explained that two spaces fronted on Washington Street and one was located inside the structure but did not front the street. Mr. Beniamino explained that the Planning Commission did not discuss the third space, nor did the applicant ask about it. Councilmember Shea recommended that the last sentence in the motion be changed to read ... “apply to first floor spaces that extend down the hallway perpendicular to Washington Street”. Councilmember Patterson noted that Council has received a different motion. Town Clerk North explained that the Town Attorney requested approval by ordinance so the motion was changed to simply adopt that ordinance. Councilmember Shea suggested the ordinance be amended. Councilmember Snyder noted that the amendment could be offered after the motion to adopt it was made.

*Councilmember Snyder moved, seconded by Councilmember Patterson, that Council adopt an ordinance to approve Special Use Permit 10-01 to allow professional offices on the first floor of 7 West Washington Street.*

*Councilmember Shea moved, seconded by Councilmember Snyder, that Council amend item #2 of the ordinance to read that “the approval shall apply only to the first floor spaces off the hall that extends perpendicular to Washington Street”.*

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

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**Special Recognitions by Mayor and Council**

Mayor Davis recognized Councilmembers Patterson and Plescow, whose terms on the Town Council were due to expire June 30, 2010. She noted that both have done a fantastic job; and, expressed her appreciation for their service. Ms. Davis advised that Councilmember Patterson was first elected to the Town Council on July 1, 2006; and, served as the Council representative on the Planning Commission, as well as serving prior to that time. Ms. Davis noted that she previously served on the Board of Zoning Appeals; and, has assisted with the Christmas in Middleburg, Bluemont Concerts, Foxcroft Alumnae Weekend, Project Helping Hand and Annual Sidewalk Sales. She further noted that Ms. Patterson was a member of the Middleburg Business & Professional Association. Ms. Davis thanked her for her hard work; and, presented her with a Town of Middleburg paperweight in recognition of her service to the community.

Councilmember Patterson advised that it had been an honor to serve on the Council. She noted that often candidates did not know what they were getting into when they ran; and, reiterated that it had been an honor to serve. Ms. Patterson expressed her opinion that the Council was a good group of people to work with; and, noted that they did a lot for the Town. She suggested this service was not always as appreciated as it should be.

Mayor Davis reminded Council that Councilmember Plescow was appointed to the Town Council in August 2008 to fill the remainder of Councilmember Robinson's term. She noted that she has served as the Town Council representative on the Farmers Market Committee and Ad-hoc Marketing Committee. Ms. Davis further noted that Ms. Plescow has assisted with the Christmas in Middleburg, Bluemont Concerts and numerous other events. She expressed her appreciation for Ms. Plescow's hard work and commitment to the Town.

Mayor Davis recognized the recipients of the Loudoun County Joint Architectural Review Board Awards. She noted that the Middleburg Plaza received an award for the adaptive reuse of their building; and, Dan Caseman received an award for renovations to his building located at 102 West Washington Street. Ms. Davis advised that she was very impressed that out of seven awards, Middleburg businesses received two.

### **Approval of Minutes**

*Councilmember Snyder moved, seconded by Councilmember Littleton, that Council approve the May 10, 2010 Work Session Meeting minutes, the May 13, 2010 Regular Meeting minutes and the May 27, 2010 Work Session Meeting minutes as amended.*

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

No – N/A

Abstain: N/A

Absent: Councilmembers Murdock and Plescow

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

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### **Staff Reports**

Councilmember Snyder noted that Bluemont has posted the Middleburg concerts on their website. He asked whether they had contacted the Town regarding these events. Economic Development Coordinator Pearson advised Council that she met with the representative from Bluemont yesterday; and, they toured the Community Center area. She noted that the concerts were not yet confirmed. Ms. Pearson advised that no concert would be held on the first Saturday in July; however, concerts would be held the following four Saturdays. Councilmember Snyder expressed appreciation that Bluemont was able to offer the concerts again this year.

Vice Mayor Kirk noted that several revenue categories were down, such as parking meter receipts. Councilmember Snyder requested a copy of the adopted FY '11 budget. Mayor Davis asked that a copy be sent to everyone electronically.

Mr. Schiro reported that he has prepared budget amendments for the FY '10 budget, which have been advertised for public hearing on June 24<sup>th</sup>. He noted that the amendments could be approved during the same meeting as the public hearing.

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

**Council Approval** – Resolution – Authorization to pick-up the employee’s contribution to VRS

Mr. Schiro reminded Council that they discussed this item during their recent work session. He further reminded them that effective July 1, 2010, VRS policies have changed to require that State employees hired after that date must pick up the 5% employee contribution. Mr. Schiro explained that localities that wished to continue to pick up this 5% contribution must adopt a resolution to that effect. He reminded Council that they decided during the work session that they wished to continue to do so; therefore, the adoption of a resolution was necessary.

*Councilmember Snyder moved, seconded by Councilmember Shea, that Council adopt a resolution authorizing the Town to pick-up the five percent employee contribution to the Virginia Retirement System under Section 414(h) of the Internal Revenue Code for Plan 2 Employees.*

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

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**Council Approval** – Member Agreement – VML Insurance Programs

Mr. Schiro reminded Council that this agreement would allow the two insurance entities – VMLP and VMGSIA – to merge into one. He noted that one entity provided general liability coverage, while the other covered employee liability. Mr. Schiro reminded Council that the Town already carried both policies. Councilmember Snyder noted that the Council was simply agreeing to a structural change; and, advised that it would have no affect on the Town.

*Councilmember Shea moved, seconded by Councilmember Snyder, that Council authorize the Mayor to sign a Member Agreement with VML Insurance Programs to continue the Town’s participation in the VML’s pool of insurance coverage.*

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

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**Council Approval** – Reduction in Performance Bond – Salamander Resort

Town Planner Beniamino explained that this bond reduction was related to the Salamander Resort Project; and, advised that Salamander requested a greater reduction than the staff has recommended. He reminded Council that the resort’s total bond was \$3,673,468; and, advised that the staff was recommending a reduction of \$1,517,723 or 40% of the overall improvements. Mr. Beniamino noted that this would allow the Town to keep a bond in the amount of \$2,155,745, which represented three site and contingency components. He explained that \$1,085,884 represented the site bond amount and \$577,633 represented the sanitary sewer and water bond amount, with the remaining \$522,228 consisting of a 20% contingency and 4% inflation factor. Mr. Beniamino noted that the last number represented the contingency on the original \$6 million bond; and, advised that the Town Engineer has recommended that the Town not reduce the

contingency or inflation factor as requested by Salamander. He noted that the reduction of those items was not standard practice. Mr. Beniamino reiterated that the staff was recommending that the bond be reduced to \$2,155,745.

Mayor Davis asked whether the Town Attorney was involved in the bond recommendation request. Town Attorney Whiting confirmed that she was not asked to review it; and, advised that she would yield to the staff's calculations. She advised Council that she agreed with the recommendation to not reduce the contingency and inflation factors. Ms. Whiting expressed frustration with the State's bonding rules; and, noted that the amounts were based upon new prices. She reminded Council that if the Town had to complete work that was not finished, they would no longer be dealing with new construction.

Town Planner Beniamino reiterated that Salamander requested a larger reduction; and, explained that they wanted a 100% reduction on the sewer and water bonds. He noted that because the lines would sit unused for eighteen months to two years, the staff was concerned that the facilities would deteriorate. Mr. Beniamino explained that for this reason, the staff did not want to give them a 100% reduction, and settled on 50%.

*Councilmember Littleton moved, seconded by Councilmember Patterson, that Council approve a request to reduce the Letter of Credit held for the Salamander Resort & Spa to \$2,155,745.*

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

No – N/A

Abstain: N/A

Absent: Councilmembers Murdock and Plescow

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

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**Council Approval** – Contribution to Fourth of July Fireworks Display

Councilmember Littleton advised Council that the Community Center has asked whether the Town would again contribute \$750 toward the cost of their annual fireworks display. He expressed his opinion that everyone enjoyed this event.

Councilmember Snyder asked whether Councilmember Littleton was proposing that the funding come from the General Fund. Mayor Davis reminded Council that last year they took the donation from the Economic Development budget, which was located in the General Fund. She expressed her opinion that taking a donation from that fund this year was doable. Economic Development Coordinator Pearson confirmed it was.

*Councilmember Littleton moved, seconded by Vice Mayor Kirk, that Council approve the donation of \$750 to the Community Center's annual Fourth of July fireworks display, said funding to come from the Economic Development budget.*

Councilmember Snyder announced that he would personally match \$250 of the donation.

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

No – N/A

Abstain: N/A

Absent: Councilmembers Murdock and Plescow

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

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**Council Approval** – Construction Inspection Services Contract Extension – Whitman, Requardt & Associates

Mr. Schiro reminded Council that this contract was related to the construction inspection services, including engineering overview and monitoring of the construction for the new water and wastewater treatment plants. He further reminded them that both projects have been delayed in terms of scheduling. Mr. Schiro advised that issues have also arisen that required additional work from Whitman, Requardt & Associates. He reminded Council that initially Salamander was picking up the costs for the engineering; however, they have changed course and were continuing to pick-up only up to \$3,000 per month of the costs, with the Town incurring any additional expenses. Mr. Schiro noted that this has had an impact on the Town's budget. He explained that he asked Whitman Requardt to prepare a cost estimate for the reviews that were necessary due to the extensions; and, advised that they have projected that an additional \$15,450 would be needed to cover the inspection services. Mr. Schiro recommended the Town continue the inspections; and, noted that the construction of both plants was at a critical stage. He noted that the "devil was in the details", particularly for the SCADA and electronic systems, as well as the membranes at the wastewater treatment plant. Mr. Schiro advised Council that the plant was moving ahead at a good rate; and, suggested the contractors had done a nice job. He noted, however, that some of the last minute details would require oversight. Mr. Schiro apologized for the lateness in presenting this request to Council; however, he did not receive the cost proposal until after the last work session.

Councilmember Snyder asked whether this contract would be a part of the FY '10 budget amendment. Mr. Schiro advised that, if approved, the costs would not be billed until after July 1, 2010; therefore, the costs would be a part of the FY '11 budget amendment.

*Councilmember Snyder moved, seconded by Councilmember Shea, that Council authorize the Mayor to sign a contract with Whitman, Requardt & Associates, in the amount of \$15,450, for the services to complete the construction phase of the water and wastewater treatment plants.*

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

No – N/A

Abstain: N/A

Absent: Councilmembers Murdock and Plescow

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

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**Council Approval** – Zoning Ordinance & Site Plan Waivers and Zoning Location Permit – Llewellyn Village

Town Planner Beniamino explained that the Llewellyn Village Apartments have requested a zoning location permit to build a three hundred sixteen square foot addition to their community center room in order to take advantage of some extra after-school programs. He reported that the associated site plan was submitted to the Planning Commission last month; and, advised that they conditionally approved it contingent upon the Council granting some associated waivers.

Town Planner Beniamino explained that waivers were needed to Section 211 of the Zoning Ordinance that addressed buffers and screening, as well as to Section 7.5.4 of the Subdivision and Site Plan Ordinance pertaining to storm water management. He advised Council that the parking lot area was located within the five hundred year floodplain; and, explained that since no work was being proposed in the lot, a waiver was appropriate. Mr. Beniamino presented photographs of the area which was required to be screened under the ordinance; and, explained that it was already sufficiently screened by a fence and row of evergreen and deciduous trees. He reiterated that the applicant was seeking a waiver to the screening requirements for the back and side of the property.

Mr. Beniamino reminded Council that while this was only a three hundred sixteen square foot addition, the property was required to come into compliance with the current ordinance as if it was a new building. He reiterated that the applicant was asking Council to look at the existing screening conditions; and, to grant a waiver so they would not have to put in an additional landscape buffer and trees, the cost of which would be significant. Mr. Beniamino advised Council that the Planning Commission recommended approval of both waivers, as well as the site plan.

Councilmember Shea asked whether the Streetscape Committee has offered a recommendation. Town Planner Beniamino explained that they normally met the first Tuesday of the month; however, they could not meet this month due to the Upperville Horse Show. He further explained that he had planned to have the Committee meet mid-month to review the application and then bring the request to Council during their June work session; however, the Windy Hill Foundation was anxious to get started on the project. Mr. Beniamino advised that the staff was recommending approval contingent upon the Streetscape Committee's review. He reminded them that the Streetscape Committee's recommendation was not required formally; and, noted that no new landscaping was being proposed. Mr. Beniamino advised Council that the Committee would simply look at the existing landscaping to determine if it was sufficient; and, suggested that it was, based upon a review of the photos.

Mayor Davis asked whether the motion should mention something about the Streetscape Committee's review. Town Attorney Whiting noted that this condition was included in the resolution. Town Planner Beniamino expressed his opinion that the Streetscape Committee would not have a problem with the project as proposed.

*Councilmember Shea moved, seconded by Councilmember Patterson, that Council adopt a resolution approving Zoning Ordinance and Site Plan Waivers and Zoning Location Permit 10-27 associated with an addition to the Llewellyn Village community center room located at 300 Windy Hill Road.*

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

No – N/A

Abstain: N/A

Absent: Councilmembers Murdock and Plescow

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

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Kim Hart, of the Windy Hill Foundation, thanked Council for their approval. He reminded them that the Llewellyn Village Apartments were constructed fifteen years ago in the days when HUD was cutting costs. Mr. Hart explained that as a result, the materials used were modest and the equipment was not very efficient. He advised Council that the Foundation decided to apply to VHDA for tax credits; and, noted that they won \$650,000 worth, which would be used for a new roof, walls, windows, and HVAC systems. Mr. Hart explained that the building would be a certified green building. He reported that the Foundation was almost done with the renovation of the cottages; and, noted that they would also be certified green buildings.

Mr. Hart reminded Council that Middleburg had the first certified green apartment building and would have the first certified green multi-family buildings in the County. He suggested that once renovated, the apartments would be more comfortable and energy efficient. Mr. Hart noted that it took a long time to win the initial grant to build the apartments; however, they kept applying. He reminded Council that it took so long because the average income in Loudoun County was so high that the requests were not funded. Mr. Hart noted that only when Senator Warner intervened and got people to pay attention to the fact that not everyone in Loudoun County was rich did they gain approval. He reminded Council that they also constructed the Levis Hill House. Mr. Hart noted

that the Llewellyn Village was the only apartment facility to have subsidized rent; and, explained that the tenants paid one-third of their income in rent, with the government paying the balance. He noted that this was the only guaranteed subsidized units in town. Mr. Hart reported that until recently, more than half of the tenants in the Llewellyn Village Apartments were elderly; however, when the Levis Hill House opened, they moved there. Mr. Hart advised Council that before the Levis Hill House existed, the Llewellyn Village Apartments contained nine children under the age of eighteen; and, now contained thirty-nine. He explained that the Foundation was doing a lot to develop programs to help these young families; and, advised that expanding the community center room was one way to do so. Mr. Hart noted that they were also helping the Middleburg Elementary School.

**Discussion Items**

**July 6<sup>th</sup> Work Session**

Vice Mayor Kirk explained that she wanted to make sure the Council would hold the July 6<sup>th</sup> work session, as the Council was scheduled to be sworn in that day. She asked whether the five members to be sworn in would be present. Mayor Davis noted that the Council has always held the swearing in ceremony during the first work session. Councilmembers-elect Hazard and Stewart and Councilmember Snyder confirmed they would be present. Mayor Davis expressed her opinion that the Council was agreeable to have the meeting on Tuesday, July 6<sup>th</sup> at 8:00 a.m. She noted that Councilmember Shea was working on a new councilmember orientation packet, which she would briefly review with the new members on that day.

Councilmember Patterson thanked the American Legion for placing flags on one hundred nine grave sites on Memorial Day. She noted that there used to be a map of those sites, which were located in the cemetery behind the Baptist Church and in the Shiloh cemetery. Ms. Patterson advised that she did not know who placed the flags at the military cemetery; however, she wished to thank them for placing flags on the Civil War graves.

**Information Items**

Vice Mayor Kirk announced that the Upperville Fire Department would hold a breakfast on June 13<sup>th</sup>.

Economic Development Coordinator Pearson reminded Council that the Farmer's Market was now open on Saturdays. She announced that they have new shopping bags that contained the Farmer's Market logo, which would be sold for \$3 each.

There being no further business, a motion was made to adjourn the meeting at 6:40 p.m.

APPROVED:

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Betsy A. Davis, MAYOR

ATTEST:

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Rhonda S. North, MMC, Town Clerk