



MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes
Thursday, July 14, 2011



PRESENT: Mayor Betsy A. Davis
Vice Mayor C. Darlene Kirk
Councilmember Kevin Hazard
Councilmember Trowbridge Littleton
Councilmember Catherine "Bundles" Murdock
Councilmember Kathy Jo Shea
Councilmember Mark T. Snyder
Councilmember David B. Stewart

STAFF: Martha Mason Semmes, Town Administrator
Elizabeth D. Whiting, Town Attorney
Rhonda S. North, MMC, Town Clerk
David M. Beniamino, AICP, Town Planner
Mike Prince, Acting Chief of Police
Cindy C. Pearson, Economic Development Coordinator

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on Thursday, July 14, 2011 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 Comment

Dan Morrow, Vice Chairman of the Loudoun County Public Library's Board of Trustees, appeared before Council to report on the progress of the efforts to double the size of the Middleburg Library. He expressed his opinion that the Middleburg Library Advisory Board had done an extraordinary job. Mr. Morrow noted that it was feared that the draft Memorandum of Understanding would not go before the Loudoun County Board of Supervisors until September; however, because the Advisory Board had done such a good job, the draft MOU was coming before the Board of Trustees this week. He expressed his opinion that there would be no opposition to the draft MOU, which would allow it to go to the Supervisors before September. Mr. Morrow suggested the members of Council speak with members of the Board of Supervisors to encourage their approval.

Priscilla Godfrey, Middleburg's School Board representative, reported that the School Board was pursuing a bond issue this fall, with all of the schools being addressed in one question. She reported that these schools would serve the Ashburn and Dulles South areas in order to take care of those high growth areas. Ms. Godfrey advised that Purcellville was addressed with the opening of Wood Grove Elementary School. She reported that Blue Ridge and Harmony Middle Schools had returned to housing the sixth, seventh and eighth grade students. Mr. Godfrey noted that the Middleburg students would be transitioned into the western Loudoun cluster; and, would attend Blue Ridge Middle and Loudoun Valley High Schools. She reported that the number of students was dropping; therefore, the schools would be in prime shape for the near future. Ms. Godfrey advised that as to Leesburg, there were three middle and high schools, as well as a new elementary school opening to address over crowding. She reiterated that the bond proceeds would

serve the Ashburn/Lansdowne area; and, suggested the elementary and middle schools were in a crisis in terms of capacity. Ms. Godfrey noted that the school system was expecting the number of students to increase from 63,500 to 69,000 in the coming year. She advised that they needed support for the bond issue.

Ms. Godfrey reported that Middleburg Elementary School was the smallest in the system. She noted that it would celebrate its centennial, including a weekend long celebration on September 23-24. Ms. Godfrey advised that Loudoun Valley High was celebrating its fiftieth anniversary; and, noted that they were collecting graduation pictures of classes from 1962 to the current year. She further noted that they just graduated their largest class in history, with five hundred sixty-five students having graduated.

Ms. Godfrey announced that she was running for re-election.

Punkin Lee appeared before Council related to the action item on the agenda for a Temporary Zoning Permit for the Noble House property. She advised that she was all for new businesses as she believed the town needed them; however, she also believed they needed to be businesses that would invest time in the town. Ms. Lee recommended they locate in a brick and mortar building, not a temporary one. She noted that the town had a lot of commercial space available. Ms. Lee expressed her opinion that businesses that came in on a temporary basis were “poaching” from the permanent ones. She noted that she has been in business for thirty-four years. Ms. Lee reiterated that temporary businesses poached on the permanent businesses’ customers. She suggested they were not a part of the business community if they were only here for xxx days.

Approval of Minutes

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that the Council approve the June 6, 2011 Work Session; June 9, 2011 Work Session; June 9, 2011 Regular Meeting; and June 23, 2011 Work Session Meeting Minutes as amended.

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

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 Semmes reported that Town Clerk North completed a walk through with VDOT and the contractor on the sidewalk, curb and gutter that was recently completed in order to identify problem areas. She further reported that they also met with the owner of Duchessa to talk about her concerns related to the removal of the brick sidewalk. Ms. Semmes advised Council that the contractor still had some patch work to do. She expressed her opinion that given time and the staff’s continued pressure, VDOT would continue to address the problems. Ms. Semmes advised Council that the milling and repaving of Route 50 was scheduled to begin on July 17th. She noted that some paving work has been done in the County.

Town Administrator Semmes reported that the Town received the maintenance bond from Salamander for the wastewater treatment plant. She noted, however, that it contained the wrong date. Ms. Semmes advised that the gist of the agreement was correct; and, noted that Salamander was addressing the date issue.

Councilmember Snyder asked whether the maintenance bond was for the water or wastewater treatment plant. Town Administrator Semmes confirmed it was for the wastewater plant. She reminded Council that Salamander was required to provide a maintenance bond equal to five percent of the construction costs for the facility.

Town Administrator Semmes reported that the Town heard from the Virginia Department of Environmental Quality regarding its permit renewal; and, advised that the draft permit was going through a technical review. She noted that DEQ visited the plant. Ms. Semmes reported that she expected to receive the approved permit within the next few weeks. She noted that she had no news with regard to the water treatment plant.

Town Administrator Semmes reported that the electrical work associated with the new fuel tank was complete. She noted that she had not heard that the gas had been delivered; however, the tank was in place.

Town Administrator Semmes advised Council that she discovered that other towns participated in Loudoun County's Alert System. She noted that Hamilton, Leesburg, Purcellville and Round Hill had the ability to send out alerts. Ms. Semmes reported that she contacted the County about Middleburg's participation; and, noted that she would continue to pursue this service. She advised Council that the Town would need to adopt a MOU with the County. Ms. Semmes expressed her opinion that this would be a good tool for the new Chief to work on as the Town could use it for emergency alerts.

Mayor Davis asked whether the Town could also send out alerts about issues such as water line breaks. Town Administrator Semmes advised Council that she would find out the details of the program. Councilmember Snyder asked that this item be scheduled for a future work session discussion.

Acting Chief of Police Prince reported that he planned to attend an Emergency Services meeting next week with Loudoun County to discuss their CAD (Computer Aided Dispatch) system. He explained that they were changing to a new system and wanted Middleburg to be a part of the process. Acting Police Chief Prince noted that Incoming Chief Klugh has made contact with the County; and, advised that both he and Chief Klugh could be present for the meeting.

Acting Police Chief Prince reported that he secured a grant this week; and, noted that he and the Town Administrator sent in a letter to claim it. He noted that he submitted a request for a second grant, which he felt would be approved. Acting Police Chief Prince reported that both were equipment grants.

Town Administrator Semmes advised Council that Acting Police Chief Prince has been very active; and, kept her informed of his activities. She noted that she enjoyed working with him.

Councilmember Murdock advised Council that she received great comments regarding the Police Department's assistance with the fireworks display. She noted that their work was appreciated. Ms. Murdock expressed her opinion that the canine attack demonstration was interesting. She thanked the Department for their efforts. Mayor Davis noted that she received a nice letter from the Community Center thanking the Town and the Police Department.

Town Administrator Semmes noted that Acting Police Chief Prince and Incoming Chief Klugh have discussed participating in National Night Out. She explained that this was a night when public safety personnel met with neighborhoods so the residents would have a chance get to know the officers on an informal basis. Ms. Semmes noted that Purcellville held a Public Safety Day each year; and, suggested this was something to explore for next year.

Economic Development Coordinator Pearson reported that the Bluemont Concerts would continue for the next three Saturdays. She advised that the last one was well attended.

Town Administrator Semmes noted that the Town Treasurer was not able to produce her usual report; however, she provided a print-out of the Town's income and expense statement for the end of June. She advised that, at a quick glance, the General Fund's total revenues did not appear to meet the budgeted amount; however, she explained that a portion of the bank franchise fees were not included as they did not come in until July 6th. Ms. Semmes advised that the Town received \$261,000 from one bank; and, noted that it had only budgeted \$130,000 in bank franchise fee revenue in total.

Town Attorney Whiting advised Council that she prepared a written report on the Colandrea case. She noted that she had not yet checked on the status of the one remaining suit. Ms. Whiting reported that she would be on vacation starting July 15th.

Councilmember Shea noted that the utilities report showed the numbers were down in June. She inquired as to the difference. Town Administrator Semmes explained that the difference was the result of the amount of rain that was received. She reminded Council that the Town experienced a lot of rain in May; and, as a result, had a lot of I&I.

Councilmember Snyder advised Council that he wanted to talk to the staff soon about improving the monitoring of the weather. He noted that he needed to conduct some additional investigation; however, he believed he could help to improve the Town's rainfall reporting.

Town Administrator Semmes reported that the Town Clerk was researching grants that may be available for large infrastructure projects, such as replacing lines and meters.

Action Items (non-public hearing related)

Council Approval – Sponsorship – Middleburg Elementary Centennial Celebration

Councilmember Murdock expressed her opinion that the Town should be a sponsor; however, she did not know at what level. Vice Mayor Kirk agreed; and, noted that the Town fought hard to keep the Middleburg Elementary School open. She suggested that if the Town agreed to a sponsorship, it would show its commitment to the school.

Mayor Davis asked whether the money would come out of the Health Center Fund. Vice Mayor Kirk recommended that it do. She noted that there was no money in the budget for this program. Town Administrator Semmes reminded Council that the Health Center budget included \$30,000 for donations. She noted the need to determine how that money would be allocated. Ms. Semmes advised Council that the sponsorship would come out of the fund balance anyway at this point, as the Health Center Fund was not making any money.

Councilmember Murdock agreed that, given the amount of effort the Town has put into keeping the school open, it should be a sponsor.

Vice Mayor Kirk moved, seconded by Councilmember Shea, that Council agree to become a Centennial Level sponsor, in the amount of \$5,000, with said funds to come from the Health Center Fund.

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

Council Approval – Resolution to amend Council Rules of Procedure

Councilmember Shea moved, seconded by Vice Mayor Kirk, that Council adopt a resolution to amend the Council’s Rules of Procedure.

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

Council Approval – Proclamation – Payroll Week

Councilmember Snyder expressed his opinion that it seemed like anyone who threw something in the Town’s direction was placed on the Council’s schedule. He suggested that no one seemed to be screening the requests. Mr. Snyder asked whether the Council wanted a screening.

Mayor Davis expressed her opinion that the Town was not receiving an over abundance of such requests. She noted that this one raised her eye brows; however, she felt it was a Council decision.

Councilmember Snyder noted that his comments applied to the next agenda item as well.

Councilmember Murdock noted that she did not understand the request. She asked why the Town was celebrating receiving money. Town Administrator Semmes explained that this one recognized the professionals who did payroll. Town Clerk North noted that in the Town’s case, this would apply to the Town Treasurer; however, the request was to recognize all the professionals in Middleburg who provided payroll services.

Councilmember Murdock asked whether the Town would recognize other professionals. Town Clerk North advised Council that most professions had some form of a recognition week. She noted that it was up to the Council was to whether they wished to participate.

Councilmember Snyder expressed his opinion that these requests were adding time to the Council’s agenda. He reiterated his opinion that no one was screening them. Councilmember Murdock noted that the Mayor was screening them. Councilmember Snyder expressed his opinion that none were being turned down.

Councilmember Shea expressed her opinion that this request seemed a little superfluous. Councilmember Hazard noted that the letter was not even addressed to anyone. Councilmember Snyder noted that the proclamation did not have anything to do with Middleburg.

Town Clerk North suggested that if the Council did not want to turn such requests down, one way to handle them would be through a consent agenda, where such requests would be handled through one motion to approve the entire consent agenda.

Councilmember Murdock expressed her opinion that a request such as this should not even be on a consent agenda.

Town Attorney Whiting suggested the Council may wish to have a policy; and, advised that otherwise, they may be surprised as to what they were asked to celebrate. She suggested the Council adopt a policy for their protection that any requests should have a local nexus and promote the public interest of Middleburg's citizens. Ms. Whiting noted that this would screen out those requests that were just form requests. She reminded Council of her lecture related to not having a policy regarding links for other organizations to a locality's website. Ms. Whiting recommended that such links not be allowed without a policy; and, explained that there was litigation in Middleburg's circuit that required a jurisdiction to allow a link to a newspaper that was running articles criticizing the jurisdiction's police officers. She advised Council that the judge did not look favorably upon the adoption of a policy after the link was established.

Mayor Davis recommended the drafting of a policy be placed on a future agenda. Town Attorney Whiting recommended that someone else litigate the question.

Councilmember Murdock asked how the Council could avoid approving this request. Town Clerk North advised Council that if they did not make a motion, the request would simply die.

Councilmember Hazard asked the Town Attorney to draft a policy for Council's consideration. Town Attorney Whiting reported that she would have something for the August meeting.

Mayor Davis explained that the reason she put this item on the agenda was because she felt the Council needed to have this type of discussion. She noted that she did not feel right saying "no", even though she did not like the request.

Councilmember Murdock expressed her opinion that the next agenda item was different in that it was addressed to the Council. Councilmember Shea noted that the community had also experienced a number of cases of childhood cancer.

Council Approval – Proclamation – Childhood Cancer Awareness Week

Councilmember Murdock moved, seconded by Vice Mayor Kirk, that Council adopt a proclamation declaring July 31 through August 6, 2011 as "Childhood Cancer Awareness Week" in the Town of Middleburg.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Council Approval – Authorization to Advertise Public Hearing - Resolution restricting tractor trailer traffic on Halfway Road

Councilmember Murdock noted that she felt strongly about this request. Mayor Davis reminded Council that it came to the Town through Trumbo Holder of the Fauquier County Board of Supervisors.

Councilmember Murdock explained that logging trucks were using little roads instead of the ones they should be using in order to avoid going through weigh stations. She advised Council that Middleburg was only being asked to comment upon Halfway Road. Councilmember Snyder expressed his opinion that this was The Plains Road. Councilmember Murdock noted that it was Halfway Road before it became The Plains Road. Councilmember Shea recommended the reference be to The Plains Road, as the portion to Middleburg was actually The Plains Road.

Councilmember Murdock moved, seconded by Councilmember Snyder, that Council authorize the advertisement of a public hearing on July 28, 2011 to accept public comment regarding a resolution to request the Commonwealth Transportation Board examine restrictions on through tractor trailers on The Plains Road (Route 626) in the Town of Middleburg.

Vice Mayor Kirk asked whether the Council needed to address the cost for the public hearing notice. Town Administrator Semmes advised Council that the staff would find the money. Town Clerk North advised Council that she sent the ad to the newspaper; and, found it was only going to be \$120 for a one time run.

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

No – N/A

Abstain: N/A

Absent: N/A

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

Council Approval – Temporary Zoning Permit – Noble House Property

Town Planner Beniamino advised Council that the Town received an application from Charles Carroll for a temporary structure and temporary zoning permit for 2 West Washington Street, also known as the Noble House. He noted that this request was similar to one the Council approved in 2010 for the Christmas Sleigh to operate a German Market House for forty-five days between Thanksgiving and New Years Eve.

Councilmember Murdock reminded Council that they also approved a temporary zoning permit for a shaved ice stand. Councilmember Shea noted that the shaved ice stand did not involve a temporary structure.

Town Planner Beniamino confirmed this request was almost identical to the one for the German Market House, as it was for the same property and would utilized the same structure for the same duration of time. He noted that the staff has provided the Council with a copy of the Town’s ordinance requirements; and, has recommended approval conditioned upon the permit expiring within forty-five days of commencement of the use and that the applicant remove the structure within three days of the permit’s expiration. Mr. Beniamino advised that he could also collect a deposit to ensure the removal of the structure. He reported that he has received several inquiries from local business owners about this application, none of whom were in support of it. Mr. Beniamino reminded Council that his recommendation was based upon the ordinance.

Councilmember Murdock noted that she listened to and agreed with Ms. Lee. She asked how the Council could approve a permit for the German Market, but not this one.

Councilmember Shea reminded Council of the discussion that took place with regard to the German Market. She noted that, in that case, the applicant was a local business who already had an investment in the town. Town Planner Beniamino advised Council that this was also the case with this application.

Councilmember Shea reminded Council that the German Market was also a seasonal permit. Councilmember Murdock asked why this application would not be considered to be seasonal. She expressed her opinion that it was a summer item.

Town Planner Beniamino advised Council that the applicant has said the juices would be unpasteurized; therefore, they could only be made and sold in the summer. He reminded them that the German sausages that were sold at the German Market were a specialty item that was made by a German butcher in Baltimore. Mr. Beniamino suggested they were rare; and, were an item that brought people into town as opposed to simply poaching off the existing customer base. He expressed his opinion that this was the difference in the applications.

Vice Mayor Kirk noted that there were other businesses in town that sold juices and cupcakes. She expressed her opinion that to approve this request would be to take business away from others. Councilmember Murdock noted that other businesses sold ice cream; however, the Council approved a temporary permit for ice cream sales.

Councilmember Snyder noted that he had concerns about issuing temporary permits. He advised that he would like to make a motion to approve the request and then ask the Planning Commission to look at tightening the ordinance so the Town would not continue to see these types of requests.

Vice Mayor Kirk questioned how soon the ordinance could be changed. She reiterated her concern that approving the application would take away from the existing businesses.

Councilmember Snyder noted that he was not talking about this request with regard to the ordinance change. He reminded Council that the zoning ordinance allowed people to make requests that the Council was uncomfortable with; and, asked that this be fixed. Town Planner Beniamino noted that the ordinance stated the Council “may” approve the permits.

Councilmember Littleton expressed his opinion that the Council was talking about two separate issues. Councilmember Snyder expressed his opinion that the application met the Town Code requirements. He advised that he did not want to invite a lawsuit over something trivial.

Vice Mayor Kirk expressed her opinion that Ms. Lee raised a good point. She noted that there were a lot of open spaces in town. Ms. Kirk agreed the rents may be high; however, she suggested the applicant could sell her cupcakes and juices to the existing businesses. Councilmember Murdock expressed her opinion that this would not happen.

Town Planner Beniamino reminded Council that they have made restaurants and retail a personal service use in the C-2 District that received an almost automatic approval. He reiterated that restaurants and retail had additional protections in the C-2 District. Mr. Beniamino noted the empty spaces that existed. He suggested that any one of those buildings could house a restaurant; and, noted that this was a restaurant use as it would have to pay meals taxes. Mr. Beniamino expressed his opinion that this use could go into a building without having to install a hood and do other things that required a large amount of capital.

Councilmember Murdock noted that the Christmas in Middleburg Steering Committee raised the issue that the local restaurants could not adequately feed the thousands of people who came to Middleburg for the event. She further noted that they have suggested that temporary food stands be put up to feed them. Ms. Murdock asked how the Council could deny this request and allow those temporary stands. Town Planner Beniamino noted that the Christmas in Middleburg event was a Town sponsored event. He suggested the Town could issue a special permit for events.

Vice Mayor Kirk suggested the Christmas in Middleburg vendors would be town vendors.

Town Planner Beniamino reminded Council of the ordinance related to itinerant vendors. He noted that this application made him look at that ordinance; and, suggested it needed to be tightened as well. Mr. Beniamino reminded Council that they tried to solve a problem with these ordinances; however, they may not have thought about the implications of what could occur.

Councilmember Murdock explained that she had a problem approving the German Market permit and denying one for someone else.

Vice Mayor Kirk noted that the Town already had a vendor selling cupcakes at the Farmers Market.

Councilmember Murdock noted the need to follow the ordinance. Vice Mayor Kirk reminded Council that the ordinance said the Council “may” approve permits.

Councilmember Snyder moved that Council approve a request from Charles Carroll for a temporary zoning permit to erect a temporary structure at 2 West Washington Street to be used for the sale of cupcakes and juices conditioned upon the following: (1) that the temporary permit expire within forty-five days of the commencement of the use; and (2) that the proposed temporary structure be removed from the site within three days of the expiration of the temporary zoning permit.

Councilmember Littleton asked whether Mr. Carroll would operate this business. Town Planner Beniamino confirmed that Mr. Carroll had created a separate business called “Middleburg Cupcakes, LLC”. He suggested that Mr. Carroll would run the business; however, he would not sell the cupcakes himself.

Councilmember Murdock seconded the motion.

Councilmember Snyder reiterated his recommendation to change the zoning ordinance so the Town could get rid of these types of applications. He noted that he wanted to show the Planning Commission the types of requests that were being received so it would show why the ordinance needed to be changed.

Vice Mayor Kirk noted that businesses were hurting. She expressed concern that approval of this request would take away from the existing restaurants.

Councilmember Murdock explained that she had a problem saying “no” to an application for the same structure on the same property, just because the business was different.

Mayor Davis expressed an understanding of what was being said. She agreed with the need to tighten the ordinance. Ms. Davis expressed her opinion that if the Town allowed temporary businesses, it should be for an established business that did not have anywhere in front of their business to operate.

Councilmember Snyder advised that he would go so far as to say that no temporary buildings would be allowed; and, that the applicant should use a tent.

Mayor Davis expressed her opinion that what the Council was saying was that they would be willing to approve permits for businesses that were already established and that were just looking for a spot to do something for a short period of time.

Councilmember Hazard agreed with Councilmember Snyder. He suggested the Planning Commission be given extensive guidance on what the Council looking for. Mr. Hazard noted that the German Market was a part of the Christmas event; however, approving such requests led to these openings. He suggested that if this section was removed from the ordinance, it may do something the Council would not want to do.

Councilmember Snyder noted that if the Council allowed one “pretty shack”, it would get requests for others. He expressed his opinion that the requests have gotten out of control.

Councilmember Hazard expressed his opinion that the Planning Commission would need guidance. Councilmember Snyder recommended the Town eliminate temporary structures.

Town Attorney Whiting suggested that one of the things that differentiated the Christmas in Middleburg vendors from this one was that the Christmas in Middleburg vendors had an element of manufacture associated with their wares, such as the cooking of sausages. She expressed her opinion that, in this case, it appeared all of the prep work would be conducted off site. Ms. Whiting noted the requirements associated with the vendors for the Farmers Market. She suggested that if the Town allowed temporary uses, the vendors should offer something that involved hand work or the finishing of a craft so they were not simply buying something to sell. Ms. Whiting reiterated that it should contain an element of actual crafting at the location. She recommended the vendor also have a nexus with an existing business. Ms. Whiting advised that these were all things that could be looked at; and, noted there were also other models to consider. She expressed concern regarding a proposed itinerant vendor ordinance that Lovettsville was considering; and, noted that they were proposing to define what could be sold rather than how a vendor qualified to come to a location to sell. Ms. Whiting expressed her opinion that Middleburg was on a sounder start; and, suggested the temporary vendors needed to be defined as to how they would be a part of the community.

Councilmember Shea agreed with a portion of what Councilmember Snyder was asking, specifically to have the Planning Commission, with guidance from the Council, look at how the Town’s policies coincided with others to ensure they had continuity in the spirit of what the Council wanted for Middleburg. She noted that she had a problem allowing a temporary structure to be in place for forty-five days.

Vice Mayor Kirk expressed her opinion that the sale of German sausages was a part of the Christmas Sleigh’s business. She advised that she did not want to have an instance in which a business simply sponsored a temporary vendor. Ms. Kirk further advised that she wanted to make sure the temporary business was a part of the sponsor’s business.

Town Planner Beniamino noted that the owner of the German Market indicated he did not make a lot of money on the sale of the sausages; and, was only selling them because people enjoyed them.

Vice Mayor Kirk expressed her opinion that the sale of juices and cupcakes were not a part of Mr. Carroll’s business. Town Planner Beniamino advised Council that this was how it appeared to him; however, when he explained the rules to Mr. Carroll’s representative, the application before them was what they submitted.

Councilmember Littleton asked whether this was the same Mr. Carroll who owned the Foxes Den Tavern. He noted that he was a local person. Councilmember Murdock noted that it was Mr. Carroll’s son who operated the restaurant. Vice Mayor Kirk asked why Mr. Carroll was not selling these products at the restaurant.

Councilmember Shea expressed her opinion that it was not the Council's role to second guess the options that were available. She noted that Mr. Carroll owned the Middleburg Plaza; and, advised that Susan Burn had a table inside the plaza on a regular basis. Ms. Shea suggested they could do the same with this; however, she reminded Council that they were not asked about that. She further reminded them that the application involved putting a temporary structure in place for forty-five days.

Councilmember Murdock noted that she seconded the motion. She asked whether this obligated her to vote for it. Councilmember Snyder confirmed it did not.

Vote: Yes – Councilmember Snyder

No – Councilmembers Kirk, Hazard, Littleton, Shea and Stewart

Abstain: Councilmember Murdock

Absent: N/A

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

Councilmember Shea recommended the Council send the temporary sales ordinance to the Planning Commission for review. Vice Mayor Kirk agreed. Councilmember Snyder recommended they also be sent the discussion from this meeting. Town Clerk North noted that the Planning Commission received the Council meeting minutes. Councilmember Hazard asked that they be sent this discussion separately. He also asked the Town Attorney to send the Commission any case law she may have.

Councilmember Littleton expressed his opinion that the design of the temporary building did not fit in architecturally with the town. He advised that he would have liked for this application to have come before the HDRC.

Councilmember Murdock reminded the Council that the German Market building did not go before the HDRC. Town Administrator Semmes noted that the Town had regulations that discussed the design of temporary structures.

Council Approval – Filing of Comments Opposing FCC Regulation - Broadband Deployment

Councilmember Murdock asked about the meaning of this item. Councilmember Shea explained that this was a trend that local governments were seeing more of – larger government groups that want to take powers away from or give special jobs to smaller governments. She advised that, as far as she could tell, the FCC was conducting an investigation to make sure that cell phone companies were capable of achieving coverage across the country. Ms. Shea suggested the FCC was looking at how small governments restricted this by placing limitations on constructing towers.

Councilmember Murdock noted that Middleburg did not have such limits. Councilmember Snyder noted that this was what the draft response indicated. He explained that the Council was being asked to authorize the Mayor to submit comments to the FCC on the Town's behalf.

Councilmember Murdock asked what the comments would say. Councilmember Shea explained that the FCC asked specific questions. She noted that those questions were addressed in the draft response that was included in the agenda packet.

Town Attorney Whiting advised Council that Middleburg was the only jurisdiction in the area that awarded a contract that was longer than five years. She reminded them that any contracts that were longer than five years triggered a franchise process for cities and towns. Ms. Whiting noted that Lovettsville received a terrific proposal for a ten-year lease; however, their Mayor recommended it be rejected as she feared being locked into a rate. She advised that she has also seen things go the other way, including a demand by AT&T to renew one of Middleburg's leases at half the rent. Ms. Whiting noted that in one case, the consultant was abusive with the staff. She reminded Council that when Middleburg solicited bids for leasing space on its water tower, it was based upon the leases being renewed with increased rents. Ms. Whiting expressed her opinion that cell phone companies wanted longer leases so they could amortize their equipment over a longer period; and, suggested they were willing to pay more on a monthly basis to get them. She advised Council that the Town of Lovettsville rolled in fees for landscaping and maintenance into their lease agreements. Ms. Whiting noted that Middleburg attached the lease as a part of the bid process. She further noted that they told the cell phone companies they could bid on that lease document; and, if they wanted any changes, the Town may reject them. Ms. Whiting expressed her opinion that this allowed for a nice negotiation. She expressed her opinion that when the FCC came out with regulations related to the cable industry, it left localities with just a basic tier; and, required a franchise negotiation that only covered eighteen channels. Ms. Whiting noted that the General Assembly adopted a statute that required localities to negotiate or use the statutory franchise.

Councilmember Murdock asked whether the Town Attorney reviewed the comments. Town Attorney Whiting confirmed she did and offered comments.

Councilmember Murdock asked about the difference in the draft response in the agenda packet and the revised one on the Council's desk. Town Attorney Whiting explained that the Town Clerk assumed these contracts were handed as non-franchises; however, they were actually obtained as leases through a franchise process.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council authorize the Mayor to submit Comments on behalf of the Town of Middleburg to the Federal Communications Commission Notice of Inquiry 11-59 pertaining to the acceleration of broadband deployment.

Vote: Yes – Councilmembers Kirk, Hazard, Littleton, Murdock, Shea, Snyder and Stewart
No – N/A

Abstain: N/A

Absent: N/A

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

Discussion Items

Proposed ordinances related to Review Processes

Town Planner Beniamino advised Council that the Planning Commission had recommended four text amendments, two to the zoning ordinance and two to the subdivision ordinance, which related to the Council's previous discussions about streamlining the development process. He asked that Council authorize the advertisement of a public hearing on these items for their August meeting.

Town Planner Beniamino reminded Council that they asked the Planning Commission to look at providing for the ability to waive site plans administratively; and, advised that STA 11-01 was what the Planning Commission recommended. He explained that under this ordinance, the Zoning Administrator would be allowed to waive site plans as long as certain criteria were met. Mr. Beniamino reviewed the criteria, which included (1) that the proposal not require a surety bond; (2) that the proposal not involve an increase in the intensity of the existing use with respect to entrances, travel ways, increased required parking or have an adverse impact on neighboring lands; (3) that the proposal will not result in more than a 15% increase in gross floor area, with any addition having a footprint of more than five hundred square feet requiring a site plan; (4) the proposal will not require approval by any state or county agency; (5) the requirement for a site plan would not advance the purpose of the site plan ordinance; (6) the proposal will not require a legislative act by the Council or Board of Supervisors; (7) the proposal will not require a new connection or upgrade to the Town's utility system; and, (8) the proposal will not change the existing grades by greater than 750 square feet.

Councilmember Murdock asked for examples of what could be approved administratively. Town Planner Beniamino advised that he would not approve anything; and, explained that the Planning Commission rejected the idea that the staff could approve an administrative waiver of the site plan. He further explained that they instead provided a check list of items that would allow for the site plan requirement to be waived altogether as long as the criteria were met. Councilmember Snyder noted that this meant it would not require a Planning Commission review; and, expressed his opinion that it accomplished the same thing.

Councilmember Murdock reiterated her request for an example. Town Planner Beniamino cited the Windy Hill Foundation's two hundred ninety square foot addition for a community room as an example. Town Administrator Semmes noted that this would not be an example, as a building permit was required for that project. She suggested that this may cause a problem; and, noted that Health Department approval may also be required for such applications.

Councilmember Shea recommended that condition six be more specific. She further recommended that it include examples. Ms. Shea expressed her opinion that this may not be understood by the general public. Councilmember Snyder recommended that it simply say the "elected body". Town Attorney Whiting recommended it say "legislative approval".

Councilmember Murdock asked whether the staff was saying that if all the conditions were met, the Windy Hill Foundation would not have had to submit a site plan. Councilmember Hazard suggested it was one that would fit the requirements. He expressed his opinion that for that particular item, a site plan would have been "overkill".

Councilmember Snyder advised Council that he was comfortable the Planning Commission was going in the right direction. He recommended that this ordinance be reviewed again once the Town had some experience with it.

Councilmember Hazard noted that the Commission looked at projects that have been done in the past. He reminded Council that there were always unintended consequences. Mr. Hazard advised that the Commission did not want to not look at a project, only to find out it should have.

Councilmember Shea expressed her opinion that, otherwise, the ordinance looked good. Town Planner Beniamino confirmed he would revise the language in STA 11-01.

Town Planner Beniamino advised Council that STA 11-02 was a new section that would allow for a minor subdivision category. He noted that a minor subdivision would not result in more than two lots; and, would have to comply with the listed conditions. Mr. Beniamino advised that the Planning Commission was okay with giving the Zoning Administrator control over small subdivisions. He cited the Allen property as a good example of this. Mr. Beniamino noted that the Commission discussed allowing three lots under a minor subdivision; however, they were more comfortable with just two. He explained that a preliminary plat would not be required under a minor subdivision, just a final record plat. Mr. Beniamino expressed his opinion that this was similar to a boundary line adjustment.

Town Attorney Whiting advised Council that she had concerns about this ordinance. She noted that Lovettsville had provisions in its Town Code for minor subdivisions; and, advised that the problem was that they also had a mandatory open space requirement. Ms. Whiting explained that under a minor subdivision, one moved to the final engineering up front. She expressed her opinion that this most often occurred due to having an old bungalow on five acres, with the owners wanting to sell off a portion of the property. Ms. Whiting advised that, in that case, the owner let the future developer do the engineering. She explained that the problem was that they must make a final subdivision submission to carve off one lot; however, there was nothing to indicate where they were putting the open space, drainage, road improvements, etc.

Town Administrator Semmes noted that the ordinance was not waiving the requirements for a construction plan, it was just waiving the preliminary plat. She advised that the owners would still have to deal with the construction plans. Town Planner Beniamino noted that this was required in a different section of the ordinance.

Town Attorney Whiting advised that where she had the most trouble with this ordinance was when an individual had a large amount of acreage that he wanted to develop. She noted that there could be a side agreement, which could be recorded, that could indicate the house and its acreage would count toward the final count so the open space would still include the original dwelling.

Councilmember Hazard asked whether the ordinance should contain a maximum lot size. Town Attorney Whiting urged caution. She suggested the side agreement could obligate the future developer to provide infrastructure to the original bungalow.

Councilmember Snyder recommended the Planning Commission look at some of the lots in town that could take advantage of this ordinance; and, determine if it would create any adverse impacts. Councilmember Hazard noted that the Commission was planning to look at the Ridgeview Subdivision before its next meeting. Councilmember Snyder suggested there may be some fairly large properties on the south side of Washington Street that should also be reviewed. He suggested the Commission think about the impacts of this ordinance if that land was subdivided.

Councilmember Hazard agreed. He recommended the ordinance include a maximum lot size limit; and, noted that the zoning ordinance already contained some maximum limits.

Town Planner Beniamino advised Council that he did not understand their concerns. He noted that all the ordinance was talking about was the division of a parent lot into two individual lots. Mr. Beniamino advised that the subdivision would still have to meet the standards required of a final plat; and, noted that the only change was that the approval was an administrative one. He reiterated that the ordinance requirements would not be removed; and, explained that it would only allow for the creation of one additional lot from the parent lot provided that no roads would be required.

Town Attorney Whiting expressed her opinion that the ordinance could result in a large lot being divided multiple times through the subdivision of single lots. Town Administrator Semmes expressed concern about the loss of planning.

Town Planner Beniamino reiterated that the only thing being removed was the Planning Commission's need to review the request and the need for a preliminary plat.

Councilmember Hazard expressed an understanding of the concerns; and, agreed the language needed to be clarified. He suggested the Planning Commission look at it again.

Town Planner Beniamino asked whether a new public hearing would be required by the Planning Commission. Town Attorney Whiting advised that this would depend upon the change(s). She noted that she did not know what the ordinance looked like when it was advertised. Town Administrator Semmes expressed her opinion that it should not require another public hearing. Town Attorney Whiting advised Council that she would like to review the public hearing advertisement.

Councilmember Hazard asked whether the staff could make the changes or whether it should be returned to the Planning Commission. Town Attorney Whiting recommended the ordinance be returned to the Commission. She advised that if it came out of a lawful public hearing process, whether it needed to be re-advertised for another hearing would depend on how much changed and what the advertisement looked like. Ms. Whiting asked whether the world was on notice that the ordinance started with a minor subdivision of three lots and ended up with what it looked like. She advised that it was better that it went down to two lots than up to five.

Town Planner Beniamino reiterated that he was unclear as to the Council's concerns. Councilmember Hazard explained that the concern was that what was intended and what the ordinance actually said may not be the same. He recommended the Commission review the language to make sure that someone could not use it to do something the Town did not intend. Mr. Hazard suggested the Planning Commission review the draft ordinance to make sure an individual could not take a ten acre lot and subdivide it under the minor subdivision process multiple times. Councilmember Snyder explained that the Council was concerned about the power of two. He further explained that they were concerned that an individual would do six subdivisions, with the result being thirty-two lots.

Councilmember Shea expressed her opinion that there was a difference in than saying the subdivision would not be for more than two lots and not more than for a total of two lots. She suggested the concept was different. Ms. Shea noted that the ordinance indicated that the subdivision would be referred to the Planning Commission for final disposition. She suggested it should also include a provision related to the regular review process that has already been established. She expressed her opinion that the applicant could always go to the BZA. Town Planner Beniamino confirmed that subdivisions could not go to the BZA.

Mayor Davis summarized that the Council was sending this ordinance back to the Planning Commission for further work.

Town Planner Beniamino advised Council that ZTA 11-03 would allow for the administrative issuance of zoning permits, as previously discussed by the Council. He further advised that ZTA 11-04 did the same thing; and, allowed the Zoning Administrator to issue zoning location permits.

Town Planner Beniamino asked the Council whether they wanted to schedule a public hearing on the three ordinances or whether they preferred to wait and do them all at once. The Council agreed to wait.

Christmas in Middleburg Steering Committee Discussion

Councilmember Shea reported that the Steering Committee met and has begun talking about the Christmas in Middleburg event. She advised that they agreed to propose to the Council that this group remain a committee to come back with proposals. Ms. Shea noted that the Christmas in Middleburg event would happen; and, advised that no one was taking it over. She further advised that this group would, however, shape it differently than before.

Councilmember Hazard concurred it would be shaped differently; and, advised that the Steering Committee wanted to make sure the Town's role was defined and the community's safety was safeguarded. He noted that the Christmas in Middleburg Committee was working to become a limited liability company (LLC); and, would still be the driving force behind the event. Mr. Hazard explained that the plan was to have an open line of communication and for the two groups to work together to keep the parade going.

Councilmember Murdock asked whether the Town Attorney has been asked to provide information regarding liability. Councilmember Shea confirmed the Economic Development Coordinator had this information. She suggested that it could be clarified further if needed.

Town Administrator Semmes asked whether the Council was referring to the Town's liability. She noted that anyone could sue for anything; and, advised that it was up to the court to determine if the Town was liable. Ms. Semmes advised that the Town did have liability insurance. She suggested that generally when a major event occurred within a community, whoever was handling it would list the town as an additional insured on their policy.

Town Attorney Whiting advised Council that she wanted to see how the final role of the Town was defined. She explained that if the Town was basically attending to the public safety aspect of the event, it could be sued; however, she could get out of it on motions. Ms. Whiting contrasted this with a Town event under which the Town would get an endorsement on its insurance policy. She cited events held by the Loudoun Museum as an example; and, noted that their liability policy allowed for off-site events and provided coverage. Ms. Whiting advised that she needed to see what the Steering Committee wanted the Town to do and what it was obligated to do. She suggested the Town may want the event to be on both policies, as well as report it to the VML.

Councilmember Shea noted that the Steering Committee talked about the need to establish emergency procedures. She advised that this information would be included in what came back to the Council. Ms. Shea noted that she felt good about how the Steering Committee meeting ended, although she advised that they were far from having decided the issues.

Councilmember Murdock noted that she was pleased the Steering Committee was working to establish emergency procedures. She advised that some people were still "smarting" from the snow storm a couple of years ago. Ms. Murdock suggested the need to designate an individual(s) who could call off the parade if needed without discussion. Councilmember Shea noted that there also needed to be a time frame established for doing so.

Councilmember Murdock suggested that a big part of the discussion was whether to have one or two parades. She noted that Punkin Lee was taking this question to the Middleburg Business & Professional Association for their input; and, would ask how this would affect the businesses. Councilmember Shea noted that this would be asked in both a Business Association meeting, as well as through a door-to-door canvass. She explained that the questionnaire asked whether there should be one or two parades and why. Ms. Shea reported that the next Steering Committee meeting would occur on July 27th.

Vice Mayor Kirk asked whether the Town representatives expressed a preference for one or two parades. Councilmember Shea noted that they have not hashed out the details, although the Committee members expressed their opinions. She advised that the Committee needed to see what came back from the Business and Professional Association before moving ahead with that discussion.

Information Items

Councilmember Snyder noted that the first Bluemont Concert was held this past weekend; and, advised that the Martinsburg Jazz Orchestra played. He expressed his opinion that they were “out of this world”. Mr. Snyder advised that the singing was “great”. He encouraged the members of Council to attend the concerts; and, noted that there were three more scheduled this year.

Town Administrator Semmes noted that she ran into Rick Reeves, the Band Director from Loudoun County High School, who was in the orchestra. She advised Council that she spoke with him about bringing the band to the Christmas Parade. Ms. Semmes noted that Mr. Reeves’ son was a chef at Market Salamander.

Councilmember Murdock asked that the Council schedule a future discussion on banners. She reminded Council that the Town made Monte’s Jewelers remove the “cash for gold” banner from outside of their shop. Ms. Murdock advised that the Emmanuel Church also had a banner; and, suggested that if the Town asked one person to remove a banner, they should ask the others. She asked whether the Council wanted to allow temporary banners.

Councilmember Shea reminded Council that the Town had a temporary banner ordinance. She noted that she had to remove her temporary sign. Town Planner Beniamino advised the Council that the local churches generally did not follow the rules nor did they get the required permits. He confirmed the Town had a temporary sign ordinance; and, explained that they were allowed for events. Mr. Beniamino reiterated that the churches did not follow the rules.

Vice Mayor Kirk recommended the Town Administrator send the local churches a note to remind them of the Town’s ordinances and the need to comply with them.

Councilmember Murdock reiterated that she did not believe it was fair to make one person remove a banner but not another. Councilmember Littleton agreed.

Councilmember Murdock reported that she purchased fifteen black and white photographs of Middleburg at an auction. She advised that she was going to give them to the Town Office until such time as a museum opened.

Councilmember Shea asked that an item be scheduled for a future agenda to discuss the ownership of the sidewalks in Middleburg. She expressed her opinion that since VDOT installed their new sidewalks, this answered the questions that have been raised about their ownership. Ms. Shea asked that this be discussed in the future.

Town Administrator Semmes asked whether Councilmember Shea wanted to discuss whether the Town should own them. Councilmember Shea explained that they has been discussion as to who was supposed to care for them and what rights the Town had.

Town Planner Beniamino reported that the Meandering Trail Committee was working with HTMB to write a manual for community-based trail projects and to draft a pedestrian plan for connecting Middleburg to the trail.

Councilmember Hazard noted that one of the items that came out of the Christmas in Middleburg Steering Committee meeting was that the entire town needed to be involved in developing ancillary events all over town for the day of the parade. He advised Council that the Middleburg Business and Professional Association was working on this. Mr. Hazard suggested this should be a festival day for the town; and, expressed his opinion that the Council could help make that happen.

There being no further business, a motion was made to adjourn the meeting at 7:34 p.m.

APPROVED:

ATTEST:

Betsy A. Davis, MAYOR

Rhonda S. North, MMC, Town Clerk