



MIDDLEBURG TOWN COUNCIL
Thursday, July 22, 2010



REGULAR WORK SESSION
MINUTES

PENDING APPROVAL

PRESENT: Mayor Betsy A. Davis
Councilmember Kevin Hazard
Councilmember Trowbridge Littleton
Councilmember Catherine "Bundles" Murdock
Councilmember Mark T. Snyder
Councilmember David B. Stewart

STAFF: Rhonda S. North, MMC, Town Clerk
David M. Beniamino, AICP, Town Planner
Cindy C. Pearson, Economic Development Coordinator
Debbie J. Wheeler, Town Treasurer

ABSENT: Vice Mayor C. Darlene Kirk
Councilmember Kathy Jo Shea

The Town Council of the Town of Middleburg, Virginia held their regular monthly work session on Thursday, July 22, 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.

Council Discussion – Middleburg Meandering Trail

Councilmember Murdock advised Council that this project was one that she felt quite strongly about; and, wanted to work with Council on. She explained that the purpose of the trail was that it would serve as a walking trail around Middleburg; and, would connect to the existing trail at the Hill School and the Mare Center. Ms. Murdock expressed her opinion that not enough citizens knew about those trails. She advised that if the Middleburg Meandering Trail were to connect as proposed, it would start at the Middleburg Elementary School. Ms. Murdock suggested that this would get children from the school into the "country" so they could see the beautiful countryside. She expressed her opinion that the Town needed to start at the lowest age possible so they could grow their appreciation of the countryside. Ms. Murdock advised that thanks to the hard work of Missy Janes and others, this could be the start of what could be in the future. She suggested the trail could be expanded to the east and west; and, should start in town so that residents, visitors and children could use it. Ms. Murdock noted that VDOT had a pedestrian trail program; and, suggested there could be money in the future for more trails. She reminded Council that when they developed their Vision Statement, it included a goal of making Middleburg a more walk able town. Ms. Murdock noted that Ms. Janes has put a lot of work into this project; and, has developed both a drawing of the trail and a book.

Missy Janes advised Council that she worked for ten years on her book called "*Life in the Country*"; and, explained that it included ideas for landowners on how they could restore their land responsibly. She further explained that it included information on what was important about protecting the water shed and what were natural resources. Ms. Janes advised Council that she looked at the trail as a natural resource library. She noted that while Councilmember Murdock emphasized children, it would be for everyone so they could learn about and appreciate what this area has to offer. Ms. Janes suggested that pedestrians could walk their dogs on the trail.

Ms. Janes advised Council that the Hill School trail was used a lot; and, noted that she helped with that, as well as the development of the Mare Center trail. She further advised that she started thinking about what could be done regionally; and, thought about a nice trail around Middleburg. Ms. Janes suggested this would be an incentive for people to come to Middleburg to do something healthy together and not just eat. She advised that Dana Westring created a rendering of the trail; and, explained that the idea was to emphasize the quaint community. Ms. Janes expressed her opinion that the trail should connect to what existed; and, explained that she started thinking the trail should start on the Middleburg Elementary School side of the town as the other side was already well served. She advised that she showed a young friend who participated in the elementary school's jogging club a copy of the trail design that could take her from the school to the creek and back; and, advised that she said that she would "have to get to school earlier". Ms. Janes expressed her opinion that this would be a great community service project, as the members of the classes could mark the trees. She advised that while she was excited to test the trail on the younger market, she has also talked to those in the older market who were down-sizing and looking for opportunities to walk. Ms. Janes expressed her opinion that this was an amazing opportunity, thanks to VDOT, that would provide a good and needed community resource. She advised Council that she has talked with representatives from the Journey Through Hallowed Ground; and, they suggested this would be a great test site for these types of projects that could occur throughout the Journey.

Ms. Janes advised Council that the trail would go elsewhere in the future; however, for now, she was only talking about Phase 1. She suggested that the trail be made doable, interesting and easy. Ms. Janes advised Council that she had photographs of a trail system in Charlottesville in which people walked across a stream, not through an engineered bridge, but by using a rope strung between trees. She further advised that in another location, pedestrians crossed a road at two yellow lines. Ms. Janes noted that this trail system had been in place for twenty-five years, with those two features remaining in existence. She advised that other areas of that trail had bricks and more of a paved path surface. Ms. Janes explained that she was proposing a trail that would consist of property that would be mowed a couple times a year to provide for a passable area for a person to walk or bike upon. She suggested that it would consist of open meadows and fields; and, reiterated that the trail itself would be large enough to run a mower across. Ms. Janes advised Council that the trail at the Mare Center was not kept up; and, noted that the signage consisted of simple arrow signage on a 4x4 post directing pedestrians as to which way to go. She noted that a couple of simple plank bridges were included. Ms. Janes advised Council that this was how she saw the Middleburg Meandering Trail.

Ms. Janes advised Council that Phase 1 of the proposed trail would start at the Middleburg Elementary School and would essentially follow an unnamed tributary of Wonkapin Creek. She expressed her opinion that the trail would not harm anyone's view as the topography was low. Ms. Janes suggested the pedestrians on the trail would feel as if they were embraced by nature. She expressed her opinion that local groups were interested in the development of the trail; and, if it happened, would help in some way. Ms. Janes advised Council that the trail would cross Route 50 just below the animal hospital at the road to the Town's treatment plant. She further advised that it would then swing below the Daley property and run through Ron Poston's property. Ms. Janes noted that it would then go into the cemetery and through the back of George White's property. She advised that she has spoken with Mr. White; and, he agreed to move the materials he had stored at this location so pedestrians could get through. Ms. Janes advised that the trail would then "sneak" through the Meadow Kirk property to the entrance of the Hill School, where it would connect to the existing trail. She expressed her opinion that the trail would make something that already existed more accessible; and, would be interesting for a different population.

Mr. Schiro advised Council that he was more interested in the grant and its terms, including the logistics of administering the grant and how it would work. He explained that as presented to VDOT and the Town staff, VDOT would be looking for an outcome to the grant.

Fatemeh Allahdoust, Senior Transportation Planner from VDOT's Northern Virginia District Office, appeared before Council. She explained that in 2004, a policy was passed that basically encouraged and incorporated elements of bicycle/pedestrian planning into every element of what VDOT did. Ms. Allahdoust advised that they were not a highway department, but were a department of transportation.

Ms. Allahdoust advised Council that she received a call a few months ago from their local assistance division letting her know that the Town had received a \$100,000 grant to do a pilot study. She explained that, as she reviewed the scope of work presented to her, the \$100,000 would come from Hazardous Elimination Program Funds, which was a federally managed fund even though the State determined who received it. Ms. Allahdoust advised that the funding was awarded on a competitive basis; and, explained that each year, the State decided on the potential hazardous locations for which to give money.

Ms. Allahdoust explained that this project was different in that it was not an implementation project as it contained no crosswalks, signals or bike lanes. She advised that she would describe it as a grass roots involvement of citizens that would come up with locations along the trail segments. Ms. Allahdoust explained that this grass roots involvement would allow for the development of a list of improvements that could be put in place for future funding.

Ms. Allahdoust noted that the Council had a copy of the scope of work. She explained that the way it read, this would be a pilot program using hazardous elimination funding allocated to the Town, who would serve as the agent for managing the project. Ms. Allahdoust further explained that the whole goal was to have the Town manage the project, including providing VDOT with invoices, which they would then use to reimburse the Town up to \$100,000. She advised that the Council must let her know that the Town would administer the project by completing the Request to Administer Project form, which would also be signed by VDOT's Chief Engineer; with the Town and VDOT then signing an agreement on how VDOT would reimburse the Town.

Ms. Allahdoust advised Council that as she read the document, the Town would be asked to designate an advisory body and would be responsible for preparing a status report within forty-five days stating what needed to be identified. She further advised that the Town would then work with the advisory board to identify and implement measures to advance the development of the trail. Ms. Allahdoust noted that Ms. Janes mentioned that she was not looking for something elaborate; and, suggested a stone dust path. She explained that the only way such a path could be developed would be if it was done through private work. Ms. Allahdoust further explained that in terms of construction, when dealing with federal money, there were lots of strings attached and the Town would have to comply with Federal and ADA standards. She noted that the trail would have to be four feet wide and be made of a certain surface. Ms. Allahdoust explained that in order to get to what Ms. Janes wanted in terms of a more rustic, nature trail, the citizens must be involved in its construction. She advised that VDOT could start the process. Ms. Allahdoust suggested the Town may get frustrated by the funding requirements and not realize that strings were attached to federal funds, in particular the need to meet ADA standards. She reiterated that an advisory body must implement this concept. Ms. Allahdoust advised that within one hundred eighty (180) days of allocation of the funds, the final product must be given to VDOT. She explained that the final product would consist of the identification of what needed major funding. Ms. Allahdoust advised that she would be the project coordinator; however, everything would be in the Town's hands. She suggested that the Town must decide how to move forward with the advisory body. Ms. Allahdoust reiterated that she would provide assistance and staff time; and, would process the invoices. She advised Council that the Town's work could be completed through the use of Town staff or a consultant.

Ms. Allahdoust suggested that portions of the scope of work could be modified to fit within what the Town would like to see; however, she noted that she would have to verify that. She advised that by the time the Town was ready to sign an agreement, they should know what needed to be executed. Ms. Allahdoust suggested that, until then, there should be some flexibility.

Mayor Davis asked whether the trail must be four feet wide and of a certain surface if the Town signed the agreement. Ms. Allahdoust explained that the \$100,000 grant was simply for the development and identification of the location of the trail, including where it would like to put the stone. She further explained that the Town would have to come up with a list of improvements in exchange for the \$100,000. Ms. Allahdoust advised that if the Town applied for federal funding to construct the trail, it would have to be constructed under federal standards. Mr. Schiro advised Council that the \$100,000 in grant money would not be used for construction, it would only be used for planning, establishing the advisory committee, generating the report and identifying hazardous conditions and how they could be mitigated. He suggested that if all of this could be done for \$50,000, the Town may be able to say it had \$50,000 left for implementation. Mr. Schiro advised that the trail was a wonderful idea; however, he noted that when the Town started dealing with federal and VDOT grant money, it could not mow a path and say "this is the trail". He explained that the trail must be ADA compliant. Councilmember Murdock noted that this was only the case if VDOT paid for the trail's construction. She suggested that if citizens built it on their property, a rustic trail would be fine. Ms. Murdock noted that the Hill School built and maintained their section of the trail.

Mr. Schiro reminded Council that the conceptual plan identified a crossing on Town property in the vicinity of the wastewater treatment plant. Councilmember Murdock agreed with the need to comply with regulations at this location; however, she suggested that for private property, the trail materials and design were up to the individuals. Mr. Schiro confirmed this would be the case if there was no VDOT funding used.

Ms. Allahdoust advised Council that the \$100,000 could be spent on developing the initial step. She suggested it could also be used to fund a cross walk and other amenities. Ms. Allahdoust explained that the Town could identify who would do what; and, apply for grant funding for those pieces that would comply with the federal and state's regulations.

Mayor Davis asked whether the grant required a match. Ms. Allahdoust confirmed it did not. Mr. Schiro noted, however, that it was a reimbursable grant, meaning the Town must front the money.

Councilmember Murdock asked whether the grant could be used for the legal expenses associated with the construction of agreements with the affected landowners. Ms. Allahdoust confirmed it could. Ms. Janes advised Council that she was told that 30-50% of the grant could go toward legal and engineering expenses. Ms. Allahdoust confirmed that these items were part of the initial work on which the grant money could be spent. She advised that she would need to check to see if it could be used to purchase easements; and, suggested this may be possible as long as VDOT did not end up maintaining them. Ms. Janes advised Council that it was her vision that easements would not be purchased. She suggested, however, the need to spend money on legal work to prepare a good legal document. Ms. Janes expressed her opinion that the engineering document would help define what needed to be done. She advised that if the Town was prudent in how it spent the grant money, she would not be opposed to using a portion to make a stone dust trail that met ADA standards. Ms. Janes noted that she did not want to spend money the Town did not have.

Ms. Allahdoust suggested these were issues that could be discussed during the study period. She further suggested that there were a lot of options. Ms. Allahdoust advised that she would be present to help guide the Town through the grant. She noted, however, the need to check on whether the grant funds could be used to purchase rights-of-way.

Councilmember Murdock noted that this project was coming to the Council for the first time. She suggested that if they wanted to proceed, there needed to be “a big discussion” so that answers could be brought back to the Council at the next meeting.

Mayor Davis suggested the need for Council approval to continue the discussion on what the Council wanted to do. Mr. Schiro suggested the sooner the Town started on this project, the better. He noted that if VDOT pulled back, the Town could lose the grant money. Ms. Allahdoust reminded the Council that VDOT was dealing with a scarce budget situation. She noted that the Secretary of Transportation and VDOT staff that helped shepherd this project were no longer on staff; and, suggested this could put the project in jeopardy. Ms. Allahdoust expressed her opinion that if someone else needed another \$100,000 for a project, VDOT could easily pull the money.

Councilmember Snyder expressed his opinion that it was incumbent upon the Council to figure out a way to enter into this agreement and then figure out the details. Councilmember Murdock asked about the mechanics of doing so. Mr. Schiro advised Council that they needed to approve the signing of the one page document in their agenda packet; and, noted that this would start the process. He explained that VDOT would then generate an agreement. Ms. Allahdoust explained that signing the one page document would officially tell VDOT that the Town would like to have the money; and, that it would administer the project. She noted that it would take a few weeks to get the form approved by VDOT’s Chief Engineer. Ms. Allahdoust explained that she would then work with the local division to process an agreement that would outline how the invoices would be paid, etc. She suggested that, at this point, the scope of work would be attached to the agreement; and, the Town would have to follow it exactly as outlined.

Councilmember Murdock asked whether the Town could sign the form to get the project started without entering into the agreement. Ms. Allahdoust confirmed it could. Councilmember Snyder suggested there was no risk for the Town in signing the form.

Councilmember Murdock moved, seconded by Councilmember Snyder, that the Town sign a Request to Administer the Project for the Middleburg Meandering Trail.

Town Planner Beniamino noted that the information indicated that an initial status report must be provided to VDOT within forty-five days. He further noted the need to identify the membership of the advisory board. Councilmember Snyder noted that this would not occur until the Town entered into the actual agreement with VDOT. Town Planner Beniamino suggested the Council may wish to start thinking about who would be appointed to the advisory committee. Councilmember Murdock noted that she already had a list of names, which she would submit to Council.

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

No – N/A

Abstain: N/A

Absent: Vice Mayor Kirk and Councilmember Shea

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

Council Discussion – Use of Health Center apartment for Middleburg Museum

Mayor Davis advised Council that she talked with the Economic Development Coordinator about the availability of the Health Center apartment; and, suggested it could be a good starting location for a museum. She further advised that the Economic Development Coordinator spoke with Eura Lewis, who was excited about the prospect.

Councilmember Murdock suggested that Ms. Lewis should chair the museum. She asked about the money aspect of this request. Mayor Davis reminded Council that the rent for the apartment was \$850/month. She suggested the Town could pay the rent or it could be paid through Health Center donations at the end of the year.

Economic Development Coordinator Pearson reminded Council that there would not be as much money available for donations if the Fund supplemented the rent for this unit. Mr. Schiro reminded Council that the Town removed the Police Department rent from the Health Center Fund in this year's budget.

Councilmember Murdock asked whether there was another option. Mayor Davis suggested that if the museum had to pay rent, it was possible that visitors could pay to come into the museum.

Councilmember Murdock asked whether there was anything in the Health Center charter that would allow the museum to not pay rent. Councilmember Snyder expressed his opinion that the Council was talking about \$10,000 either way, whether it came out of the Health Center or General Fund. Mayor Davis suggested that perhaps people would donate money toward the rent. Councilmember Snyder advised that he would be surprised if the museum collected five percent (5%) in donations during its first year. He reiterated that this was a \$10,000 cost; and, suggested that the Council must get its arms around that cost. Councilmember Murdock noted that there would also be electric costs to pay. Economic Development Coordinator Pearson advised Council that the electric costs were included in the rent. Councilmember Snyder suggested the need for the Council to put on their thinking caps and figure out how Ms. Lewis could raise \$10,000/year.

Mayor Davis noted that Vice Mayor Kirk served on the Health Center Advisory Board; and, advised Council that she was in favor of this proposal. Councilmember Snyder agreed it was a good idea; however, he noted that the question was how to fund it. Mayor Davis recommended that the proposal be sent to the Health Center Advisory Board for their discussion and recommendation.

Councilmember Murdock noted that the rent money collected went to community organizations. She suggested that perhaps half of the money could come out of the Health Center donations, with the museum raising the other half. Councilmember Snyder expressed his opinion that, initially, the Town would have to budget for the cost. He suggested it would hit the Town's budget one way or another. Councilmember Littleton noted the need to staff the museum.

Councilmember Snyder noted that the Health Center's donations were fixed each year; and, advised that he did not want to short change another agency. He suggested the Council think about how this cost could fit into the Economic Development budget, without it becoming too uncomfortable. Mr. Snyder reiterated that the cost was approximately \$10,000/year; and, suggested that at least half of it would have to be paid out of the Town's budget.

Mayor Davis questioned whether the Council wanted to ask the Health Center Advisory Board to discuss this proposal. Council agreed it did. Mayor Davis requested that the Town Clerk ask the Vice Mayor to schedule a meeting of that body. She suggested that Ms. Lewis also attend the meeting.

Councilmember Hazard asked about the details of the museum. Mayor Davis explained that the development of a museum had been a pet project of Eura Lewis' since she was on the Town Council. She further explained that many years ago, the Town was going to purchase the Asbury Church building on Marshall Street for a museum; however, the property was sold before it could do so. Ms. Davis noted that the Town had spoken with representatives of the Loudoun Museum about the development of a Middleburg museum in the church building; and, they were excited. She explained that since that time, the idea has been brewing about the development of a museum.

Councilmember Hazard asked whether the apartment was located in the front of the Health Center building. Mayor Davis confirmed it was. She explained that the idea was that this would be a location where the Town could start putting items out for display. Ms. Davis noted that ideally, she would like to find an actual home for the museum. Councilmember Murdock expressed her opinion that the Asbury Church building was ideal for a museum. Mayor Davis expressed her opinion that this could be the spark that started the museum. Councilmember Snyder suggested that it start small and grow large some day. Councilmember Littleton expressed his opinion that the Health Center building was a great location as it was located in the center of town.

Council Discussion – Request to adopt resolution related to payday lenders

Mayor Davis reminded Council that they have received a request from the City of Staunton to adopt a resolution related to payday lenders. Mr. Schiro advised Council that this request went to all of the VML membership in an effort to get other jurisdictions to support Staunton’s efforts. Councilmember Murdock asked whether this resolution would be good. Mr. Schiro expressed his opinion that there would be no harm in adopting a resolution. Mayor Davis noted that there were no payday lenders in Middleburg; however, the Council would be supporting the State if it approved the resolution.

Town Clerk North noted that she was not sure what Council wanted to do regarding this item. She advised that, just in case, she prepared a draft resolution; and, distributed copies to the Council.

Councilmember Snyder moved, seconded by Councilmember Littleton, that Council approve a resolution seeking action by the General Assembly and Governor to prohibit predatory, usurious lending practices in the Commonwealth of Virginia.

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

No – N/A

Abstain: N/A

Absent: Vice Mayor Kirk and Councilmember Shea

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

Council Approval – Acquisition of new tax billing software

Town Treasurer Wheeler advised Council that Liz Whiting and Maureen Gilmore, the Town Attorney for Round Hill, Hamilton and Purcellville, have reviewed the contract and were making changes to it. She noted that she had not yet received those changes.

Town Treasurer Wheeler advised Council that the Towns of Round Hill and Hamilton have asked the vendor, Logics, whether it would be possible to spread the payment for the new software over two fiscal years instead of one; and, noted that she had made the same request. She advised that no response had been received.

Town Treasurer Wheeler advised Council that the Towns of Middleburg, Round Hill and Hamilton do their real estate tax billing at the same time; therefore, they would all use the software at the same time. She noted that the proposed price of \$13,000 was contingent upon all seven towns in Loudoun County participating in the purchase. Ms. Wheeler advised that she was not suggesting the Council take action until the Town knew whether Logics would agree to split the payment.

Mayor Davis asked what changes the attorneys were suggesting. She noted that the contract indicated that the Town would reimburse Logics for meals and incidentals; and, suggested that if all seven towns were participating, they could share those expenses. Councilmember Snyder noted that he had the same question. He asked whether Logics could do the training in one area so the towns could

share the travel and accommodation costs. Mayor Davis noted that Logics must be in each town to work on their particular system. Councilmember Snyder suggested this could be set up so Logics spent the same amount of time in every town, making the costs a wash. Mayor Davis asked whether there would be training that all of the towns would need to participate in, at which time the costs could be shared. Town Treasurer Wheeler confirmed there would.

Councilmember Hazard asked whether the Town currently used Logics software. Town Treasurer Wheeler confirmed it did. She explained that when the Town purchased the Logics software (for utility account billings), it received Capital software for the tax billings. Ms. Wheeler further explained that the two systems were supposed to be integrated together; however, that did not occur. She advised Council that when the Town purchased the software for the tax billings, Capital consisted of a ten man team. Ms. Wheeler further advised that they were now a two man team working out of a basement; and, noted that she was not sure how long they would continue to operate.

Councilmember Hazard expressed his opinion that the proposed contract had lots of places that would allow Logics to double price the Town; and, noted that the language indicated that something would cost \$xx unless it cost more. He questioned the experience of other jurisdictions that have used this particular software when there was an initial bid like this. Mr. Hazard asked what was the final costs were for those jurisdictions. Town Treasurer Wheeler advised Council that the seven towns in Loudoun County used Logics (for utility billing) including Middleburg. She noted that it was more expensive to go with other software providers. Ms. Wheeler advised Council that she did not work for Middleburg when the utility billing software was first installed. Mr. Schiro advised Council that he was involved with the introduction of Logics software in another jurisdiction. He explained that in that case, a consortium of towns was involved in order to get a competitive price for their accounting software, which replaced the Matron software that was no longer compatible with the systems. Mr. Schiro explained that at that time, towns were faced with the need to switch all of their software, not only for taxes but for water billing and financial operations, as the DOS-based software could not be converted to windows. He advised Council that at that time, Logics could not provide tax billing software; therefore, they brought in a third party, Capital Software. Mr. Schiro expressed his opinion that most jurisdictions joined in; and, were using such a set-up. He advised Council that the Capital software was not good software; and, noted that he switched it out in another jurisdiction at a cost of \$50,000 for the purchase and conversion. Mr. Schiro recommended that down the road, the Town also get rid of its Logics software.

Economic Development Coordinator Pearson expressed her opinion that Councilmember Hazard was asking whether other user groups have used the real estate software. Town Treasurer Wheeler advised that this software was not yet been developed.

Councilmember Hazard noted that the contract talked about not supplying the Town's hardware. He asked why the Town was talking to Logics if they were not looking at the hardware. Town Treasurer Wheeler advised Council that Logics was talking to STS (Town's IT consultant). She noted that some localities were going to need a new server for this system.

Mayor Davis expressed her opinion that the Council should not discuss the contract further until the Town Attorney had made her recommended changes. Councilmember Snyder noted that he was happy that the Town Attorney was reviewing it; and, suggested the Council let her continue to do so. Councilmember Hazard suggested that Councilmember Snyder also review it as an IT person. Town Treasurer Wheeler noted that Logics was asking for the contracts back by mid-August. Mayor Davis suggested the contract be e-mailed to Council as soon as the attorney's revisions were received. Town Treasurer Wheeler expressed hope that she would have heard from Logics by that time on the question of breaking the cost over two years.

Council Approval – Referral of Special Use Permit Application to allow offices on first floor to the Planning Commission – 2 West Washington Street

Councilmember Murdock inquired as to who the applicant was. Town Planner Beniamino advised Council that the applicant was the property owner’s attorney. He noted that there were no businesses currently in the building. Mr. Beniamino explained that this application was received late last week; and, advised that it was his desire to have the Planning Commission hear it during their meeting next week. He reminded Council that they needed to refer the application to the Planning Commission so they could discuss it.

Councilmember Snyder expressed his opinion that there was no point in doing so; and, suggested the application was counter to the Town’s desire to have commercial development in the C-2 District. He expressed his opinion that the application went against the Town’s goal of setting up an affordable business rent program in town so the rents would not continue to sky rocket. Mr. Snyder reminded Council that the most expensive use/rent was typically office use; and, advised that he did not want to go down that path. He suggested that he would be happy to deny the application now.

Town Planner Beniamino reminded Council that they could not deny the application without having the required public hearings. He advised that they must send the request to the Planning Commission and receive their recommendation before the Council could act. Mr. Beniamino expressed an understanding of Councilmember Snyder’s position; and, reported that the Planning Commission Chair has echoed what Mr. Snyder was saying. He expressed his opinion that if the request was denied, the applicant would appeal the question of whether this was truly a first floor to the Board of Zoning Appeals. Mr. Beniamino advised that he was not sure the Town would have much hope of winning that appeal. He reminded Council that in 2003, they added language to the zoning ordinance that stated that offices were not allowed on a first floor; however, they did not include a definition of a “first floor”. Mr. Beniamino expressed his opinion that this may not happen; however, he suggested the Town should look at including a definition in the ordinance. He advised that he planned to talk to the Planning Commission about such a change. Mr. Beniamino advised Council that there were examples of buildings around town that may consider the question of what was a first floor; and, cited the example of 7 West Washington Street. He suggested that an argument could be made that this property was higher up than those businesses that sat at the ground level. Mr. Beniamino reiterated the need for clarification of the ordinance.

Councilmember Snyder moved, seconded by Councilmember Littleton, that Council refer a request for a special use permit at 2 West Washington Street to allow for professional offices on the first floor of the Noble House to the Planning Commission for their consideration and recommendation.

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

No – N/A

Abstain: N/A

Absent: Vice Mayor Kirk and Councilmember Shea

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

Council Approval – Farmers Market Week Proclamation

Economic Development Coordinator Pearson advised Council that the Governor has declared August 1-7, 2010 as Farmers’ Market Week in the Commonwealth of Virginia.

Councilmember Murdock moved, seconded by Councilmember Hazard, that Council adopt a proclamation declaring the week of August 1-7, 2010 as “Farmers’ Market Week” in the Town of Middleburg.

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

Mayor Davis displayed a copy of the State’s proclamation; and, asked whether the Council wanted to read it. Town Clerk North advised Council that the State and Town’s proclamations were nearly identical. She further advised that the only real difference was that the State included information on the growth of farmers markets within the Commonwealth.

Councilmember Hazard asked that the date of adoption be changed from August to July.

Council Approval – Temporary Zoning Permit – Andrew & John Rader

Town Planner Beniamino advised Council that this request came in earlier in the week; therefore, he did not have time to prepare a report. He explained that the applicant’s business plan was to sell shaved ice; therefore, he did not want to wait until the August meeting to present it. Mr. Beniamino reminded Council that in 2009, the Town adopted a zoning ordinance update which dealt with temporary sales; and, noted that this update stated that the Council must give approval for temporary sales within the town. He further noted that he asked the applicants to put together a packet that addressed the issues identified in the ordinance. Mr. Beniamino expressed his opinion that they did a better job of doing so than most adults. He advised that as far as the staff was concerned, this was the first request for a temporary sales permit under the new ordinance, so he wanted the Council to understand that others may come forward as a result. Mr. Beniamino suggested the need to think about the issues, such as the duplication of services and whether the Council wanted to allow for this. He urged the Council to be cautious about what they allowed and did not allow; and, the reasons behind doing so.

Andrew Rader advised Council that he was a senior at the Middleburg Academy; and, his brother, John, was a freshman. He explained that their idea for a shaved ice stand started last year when they traveled to Hawaii and saw a man selling shaved ice on the street. Mr. Rader expressed his opinion that it was a friendly atmosphere; and, suggested it would be a fun summer job to set up a stand in Middleburg and bring the Hawaiian atmosphere to town.

John Rader advised Council that the staff told them that if they could get an agreement with a property owner in town, they could get a temporary sales permit for fifteen days or up to thirty if no complaints were received. He further advised that the Middleburg United Methodist Church agreed to let them use their front lawn on Friday and Saturday afternoons; and, noted that they would see if there was a need for Sundays as well. Mr. Rader explained that they would use two tables – one of which would face the sidewalk and would be used to make the shaved ice and the other of which would have a cash register and would be used to fill the customers’ orders. He noted that they would clean up the property and would have trash cans available. Mr. Rader expressed his opinion that shaved ice was of a better quality than ice cream; and, explained that it consisted of shaved ice covered with syrup. He noted that the vendor in Hawaii offered ice cream on the bottom, which he thought was a big hit; therefore, they would offer this as well. Mr. Rader noted that it was possible that they may also have music.

Councilmember Murdock asked whether the tables would be located inside the church lot so that the customers would have to walk on the interior sidewalk. Mr. Rader confirmed they would.

Town Planner Beniamino advised Council that they would need to agree to this idea in concept; and, noted that the Town Code provisions left it to him to ensure compliance.

Councilmember Murdock asked whether temporary sales were allowed at Christmas. Town Planner Beniamino reminded the Council that they have not allowed them for a while. He noted that the last request occurred four years ago; however, it was under a different structure. Mr. Beniamino reiterated that there was a new ordinance in place that allowed for temporary sales for fifteen days. He advised Council that he made the decision that the fifteen day period could be broken up over time as the Raders were planning to break down their tables each night. Mr. Beniamino opined that the fifteen days could be spread over the course of several weekends; and, noted that it could be extended further if there were no problems. Mr. John Rader advised Council that they would not need a thirty day permit as they were stopping sales in September.

Councilmember Hazard asked about Health Department issues. Town Planner Beniamino advised Council that the Raders would have to check with the Health Department about permitting.

Councilmember Hazard asked about the payment of taxes. Town Planner Beniamino advised Council that he was working with the Economic Development Coordinator and the Town Treasurer on that piece. He noted that the decision was whether to give the Raders a permanent business license or a temporary one. Mr. Beniamino reminded Council that the temporary business license cost \$500/year. He expressed his opinion that if the Raders conducted their operations yearly over a couple of summers, they could be considered a business and be given a regular business license that would cost \$20. Mr. Beniamino noted, however, that they would have to pay meals taxes. He confirmed that they would be required to pay a fee.

Councilmember Murdock expressed her opinion that the vendors did not pay a fee for the Dog Days in Middleburg event. Economic Development Coordinator Pearson confirmed they paid a one-day temporary vendor fee.

Councilmember Murdock asked whether there was a downside to approving this request. Town Planner Beniamino advised Council that there was an existing ice cream shop in town. Mayor Davis noted that this request was for shaved ice. Town Planner Beniamino advised that he was not opposed to what the applicants were looking to do; however, he suggested that sometimes existing brick and mortar stores took issue with individuals replicating the services they provided. He reminded Council of the recent issue of a coffee truck that sold coffee on the street, in which a coffee store owner complained.

Councilmember Snyder asked whether this request involved a temporary zoning permit that had nothing to do with a business license. Town Planner Beniamino confirmed this was correct. Councilmember Snyder noted that he was satisfied with the request. Mayor Davis noted that the Council must approve the concept, with the Town Planner ensuring the business met the Town's statutes. Town Planner Beniamino noted that he would deal with issues such as complaints of trash, loud music or access issues.

Councilmember Snyder asked whether the Town Attorney was aware of this request. Town Planner Beniamino confirmed she was aware of the temporary sales ordinance; however, she was not aware of this application as she was in Maine.

Councilmember Hazard expressed his opinion that the down side of approving this request would be if another business said "you allowed this application, why not mine". Councilmember Snyder expressed his opinion that temporary zoning permits were reviewed on a case-by-case basis. He suggested the law understood this. Town Planner Beniamino reminded Council that if temporary sales got to the point of being out of control, they could always rescind the ordinance.

Councilmember Snyder moved, seconded by Councilmember Murdock, that Council approve a request from John and Andrew Rader for a Temporary Zoning Permit to allow for the sale of shaved ice at the Middleburg United Methodist Church as allowed under Town Code Section 122(V)(64)(b).

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

No – N/A

Abstain: N/A

Absent: Vice Mayor Kirk and Councilmember Shea

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

Discussion

Mr. Schiro advised Council that the Town was having an extremely difficult time getting the new wastewater treatment plant started due to the low flows. He explained that they were now implementing a plan to close one side of the plant; and, to operate only one membrane and one basin at a time in order to reach permit levels. Mr. Schiro reminded Council that the new treatment plant was designed to treat 250,000 gallons/day in order to accommodate Salamander's needs. He advised that some days, the Town did not collect 80,000 gallons/day, particularly in dry weather. Mr. Schiro expressed concern that this could be an on-going operational issue, as the plant was not designed to operate at such low flows. He reiterated that the Town could operate half the plant, alternating the membrane trains to keep them wet and active.

Mr. Schiro explained that doing this would bring up issues in terms of the plant's design; and, noted that the plant was designed to automatically run both trains. He advised Council that alternating the trains would result in more manual work on the part of the operators. Mr. Schiro expressed his opinion that if the plant achieved its permit limits within the next couple of weeks, Salamander would probably request a further reduction in the performance bonds; and, may even ask the Town to accept the plant once DEQ issued the permit. He suggested the Town needed to nail down all of the issues before accepting the plant. Mr. Schiro reiterated that DEQ approved the permit to treat a certain amount of waste; and, noted that this approval was based upon the design and how the plant would operate. He expressed his opinion that the Town could be required to go back to DEQ as the plant may not have the appropriate flows for three years. Mr. Schiro suggested that DEQ may require changes; and, that there may be additional engineering costs required.

Councilmember Snyder suggested the Town get to the point where it could switch trains before going to DEQ to ask for a permit. Mr. Schiro confirmed that it could do so; however, he suggested that DEQ may require the Town to re-write the operational manuals. Councilmember Snyder expressed his opinion that this would be at Salamander's expense. Mr. Schiro suggested this be addressed before the Town accepted the treatment plant. He reminded Council that the agreement between the Town and Salamander required that the Town be given a thirty day notice of completion, with the Town then having thirty days to prepare a punch list and accept the plant. Councilmember Snyder suggested the Council should require that both trains be operated before the Town accepted the plant. He noted that this did not have to occur at the same time, but rather could alternate back and forth. Mr. Snyder suggested the Town could evaluate the risks and determine what needed to be done to mitigate them.

Mr. Schiro advised Council that tremendous strides have been made in completing the new water treatment plant; and, noted that it would probably be on line by the end of August. He explained that the contractors were in the process of chlorinating and sanitizing the water lines, which the Virginia Department of Health would then have to approve. Mr. Schiro reminded Council of the need to operate the plant. He explained that the way the system was set up, there was a valve that would open once the pressure fell below a certain point. Mr. Schiro reiterated that the plant must be opened.

Mr. Schiro advised Council that Loudoun Water conducted water flow tests for the National Sporting Library for their fire suppression system. He explained that their suppression system was designed to require a certain level of flow and pressure; and, advised that the Town was having a hard time meeting those based upon the flow test conducted at the hydrant on The Plains Road that was closest to the library. Mr. Schiro advised that he and the Town Planner met with representatives from the National Sporting Library to tell them that Loudoun Water was not comfortable with the flows or allowing the connection of their fire suppression system until the new plant was on line. He noted that they talked about the options that may be available; and, told the Library that if they continued with their fire suppression system, they would be doing so at their own risk. Mr. Schiro explained that if they were ready before the plant was operational, they would not be allowed to connect the fire system to the Town's system. He expressed his opinion that this would not be a problem in light of the plant's progress; and, noted that the plant was scheduled to start on August 4. Mr. Schiro noted that the water treatment plant was simpler in terms of starting than the wastewater treatment plant.

Mr. Schiro suggested the Council may want to think about a fee for fire suppression systems; and, expressed his opinion that if a customer had to pull demand from the system to accommodate a fire, the Town should be reimbursed for the water used. He noted the need to run the plant harder than usual to make sure the water was available. Councilmember Murdock noted that this would only occur in the case of a fire.

Councilmember Hazard asked whether the fire suppression lines were metered. Councilmember Snyder confirmed they generally were not. He reminded Council that they went through this discussion with the Windy Hill Project. Mr. Snyder advised that he was more comfortable having customers pay for the use of water during non-fire events. He noted that the Town did not charge a fee for connection to the fire hydrants in the event of an emergency.

Councilmember Snyder asked whether the new water treatment plant would serve the existing customers in town when it came on line. He further asked whether Salamander would still be allowed to use the wells. Mr. Schiro confirmed that the new treatment plant would serve the existing customers. He further confirmed that Salamander would not be allowed to use the wells; and, advised that he had a conversation to this effect with them earlier this week. Mr. Schiro reminded Council that Salamander's HVAC system and cooling towers were currently using non-potable water from the wells; and, advised that he discussed the disconnection of the well line with the contactor. He noted that Salamander expressed hesitancy to disconnect the line and to tie into the treatment plant lines. Mr. Schiro advised Council that it was his understanding that once the plant was on line, the only non-potable water that Salamander could use was for irrigation.

Councilmember Snyder advised Council that he wanted to make sure that Salamander was using water from the new treatment plant once it was on line. Councilmember Murdock asked whether this would help the Town off-set the cost of operating the new plant. She further asked what the plant would cost to run. Mr. Schiro expressed his opinion that it would be double the cost of operating the existing plant; although, he noted that there may be some economies of scale.

Councilmember Snyder noted that the new water treatment plant would help improve the Town's water quality. He insisted that Salamander pay for any water they used and that they not use the wells except for agricultural uses. Councilmember Murdock suggested that Salamander's use would not quite off-set the costs to operate the plant. Councilmember Snyder noted that it would help; however, the Town would still "be in the hole". Councilmember Murdock asked how long the Town could afford to operate the plant at a deficit. Mr. Schiro advised Council that it was going to cost the Town a good deal of money to operate the new plants. Councilmember Snyder expressed his opinion that the user fees would have to go way up. Councilmember Littleton noted that this was only until the Salamander Resort was on line. Councilmember Snyder noted that the Town would incur additional expenses; and, advised that there was no way to pay them other than through the rates. He suggested

this was the only avenue allowed by law. Councilmember Littleton asked about the amount of the increase. Mr. Schiro reminded Council that they have talked about giving Salamander credits for helping to pay in advance for the operations; and, advised that the amount was somewhere around \$10,000 per month.

Mayor Davis asked whether the Town must take over operation of the plant. Mr. Schiro confirmed the agreement said it must. Councilmember Snyder expressed his opinion that it would be a big risk for the Town to wait. He suggested that taking over the operations and moth balling the plant was a huge risk as well. Mr. Schiro confirmed the Town could not do so based upon the agreement. He explained that the effluent going out of the plant was currently going into the old plant before being discharged into the stream. Mr. Schiro further explained that they were cycling the effluent into the old plant and pulling the test reports from that. He advised that there would come a time when the old plant would not be operational as its components would be removed. Mr. Schiro advised Council that they would not want to mothball the wastewater treatment plant due to the membranes.

Councilmember Hazard noted that there would be operational costs anyway. Mr. Schiro reiterated that not operating the plants was not an option. Councilmember Littleton suggested the Town Attorney talk to Salamander about giving additional help. Mr. Schiro noted that he held that discussion with Salamander; and, while they were amenable to doing so, the problem has been the amount of time requested to pay them back. He reminded Council that the discussion revolved around credits; and, explained that they would pay the Town a certain amount and would receive a credit for the future. Mayor Davis noted that there was nothing in writing. Mr. Schiro advised Council that Salamander wanted to be paid back in a year, which only delayed the problem. Councilmember Littleton reiterated his suggestion that the Town Attorney work on this issue. He further suggested that the Town attempt to get the repayment extended over a longer period of time. Mr. Littleton expressed his opinion that the Town should not repay the credit until the Salamander Resort was on line and open for business. Mr. Schiro recommended that, once the resort was on line, the Town repay Salamander over a three year period for each year they helped operate the plant. He expressed his opinion that the Town could not pay them back in the first year. Councilmember Littleton reiterated his recommendation that the Town Attorney work on this issue.

Councilmember Snyder expressed his opinion that this would be a problem until the resort was open. Councilmember Littleton noted the need for the Town to do something. He reiterated his suggestion that the Town Attorney work on it. Councilmember Snyder agreed that he was all for anything the Town Attorney could do to soften the blow. He reiterated, however, that this would be an issue until the resort was open for business.

Councilmember Hazard asked whether the Town Attorney handled the Town's negotiations. Councilmember Littleton confirmed that she has been working on this the whole time. Mr. Schiro explained that he and the Town Attorney brain stormed on the terms, with the Town Attorney then putting them into legal terms. He reminded Council that they talked about this a while ago; and, advised that he sent Salamander additional information on scheduling the pay back. Mr. Schiro noted that he could talk to Prem Devadas again. Councilmember Snyder asked whether Mr. Devadas or Jonathan Rak (Salamander's attorney) was the appropriate contact. Mr. Schiro noted that he has been talking to Mr. Devadas about the mechanisms, with the attorneys working on the legal forms. Mayor Davis advised Council that she asked Mr. Schiro to let her know if he was not getting anywhere so she could talk to Salamander. She noted the need for numbers on the cost to operate the water plant. Mr. Schiro expressed his opinion that the plant needed to be operational for a month before the staff would know the numbers. Mayor Davis recommended that Mr. Schiro talk to Mr. Devadas about the Council's concerns and their desire to put something in writing. She suggested the need to know whether this would happen within the next week or so. She reiterated that if it did not, she would talk to Salamander. Mr. Schiro reminded Council that Salamander was under no obligation to assist the Town with the operational costs. He further reminded them that the Town could not require it.

Councilmember Littleton suggested that the staff do what it could to get it done. He further suggested that if the staff met with a lot of resistance, the Council could use other resources to work on a solution.

There being no further business, a motion was made to adjourn the meeting at 7:24 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk