



**MIDDLEBURG TOWN COUNCIL
Monthly Work Session**



**Monday, August 10, 2009
Town Office, 10 W. Marshall Street**

8:00 a.m.

PENDING APPROVAL

PRESENT: Mayor Betsy A. Davis
Councilmember Trowbridge Littleton
Councilmember Catherine "Bundles" Murdock
Councilmember Lisa Patterson
Councilmember Judith Pryor Plescow
Councilmember Kathy Jo Shea
Councilmember Mark Snyder

STAFF: Jerry M. Schiro, Town Administrator
Rhonda S. North, MMC, Town Clerk
David M. Beniamino, Town Planner
Steven L. Webber, Chief of Police

ABSENT: Vice Mayor Darlene Kirk

The Town Council of the Town of Middleburg, Virginia held their regular work session on Monday, August 10, 2009 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 8:00 a.m.

Council Approval – Agreement - Wastewater Treatment Plant Approval of Shop Drawings – Salamander Development

Town Administrator Schiro explained that this was an agreement initiated by Salamander Development to deal with the change orders for the wastewater treatment plant project. He noted that some of the change orders were substantial; and, dealt with the equipment. Mr. Schiro reported that the Town and Salamander have reached an agreement on the change orders; and, Salamander has submitted them for the Town's review. He explained that the purpose of the agreement was that Salamander wanted some form of a legal agreement that confirmed that the Town agreed to the change orders and would not its change mind again on the equipment. Mr. Schiro noted that the Town Attorney has recommended some edits to the agreement; and, advised that there were some comments yet to come. (Councilmembers Patterson and Plescow arrived at the meeting). Councilmember Murdock asked whether the change orders were Town initiated. Town Administrator Schiro confirmed they were. Councilmember Snyder asked whether they were in alignment with the recommendations of the Town's engineers. Town Administrator Schiro confirmed they were. He reminded Council that all of the change orders have been discussed with them in the past, such as the membrane lining. Mr. Schiro reiterated that Salamander was concerned that the Town may its change mind; and, advised that he had no problem with the agreement. He explained that the reason he placed the agreement on the work session agenda for approval was that he would like to execute it as soon as the attorneys could agree on the language as Salamander was holding up initiating the change orders until the agreement was executed. Mr. Schiro advised that the proposed motion allowed the Mayor to sign the first set of change orders as he would be on vacation next week. He further advised that he

could sign subsequent change orders. Mayor Davis reminded Council that these were all changes requested by the Town. Town Administrator Schiro confirmed there was about \$160,000 worth of change orders. He reiterated that Salamander would not authorize the contractor to execute the change orders until this document was signed.

Councilmember Snyder moved, seconded by Councilmember Shea, that the Middleburg Town Council approve the agreement entitled “Wastewater Treatment Plant Approval of Shop Drawings” dated August 10, 2009, attached hereto, and authorize the Mayor or her designee to execute the same on behalf of the Town. Councilmember Snyder further moved, seconded by Councilmember Shea, that the Town Administrator be authorized to execute such instruments in the future approving shop drawings to signify approval as required by Paragraph 2(d) of the Amended and Restated Water Supply Facilities and Wastewater Treatment Plant Agreement dated August 9, 2007, upon advice of the Town’s engineer and approval for form by the Town Attorney.

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

Council Discussion – Renewal of parking lot lease – Middleburg United Methodist Church

Town Administrator Schiro reported that he, the Town Planner, Chief of Police and Howard Armfield, of the Middleburg United Methodist Church, have met to discuss the informal opinion offered by the Zoning Administrator regarding the church’s proposal to lease a portion of their spaces directly to Yount, Hyde & Barbour. He reiterated that they met to explain the Zoning Administrator’s position, as well as the Police Department’s inability to enforce parking regulations for a private lot. Mr. Schiro noted that Mr. Armfield was available to discuss this matter.

Mr. Armfield first thanked Council for their willingness to serve the Town. He provided a history of the Town’s lease of the lot at a fixed base rent plus fifty percent (50%) of the parking meter proceeds over a certain amount. Mr. Armfield explained that when the Town approached the Church about renewing the lease in June, the Church’s Finance Committee discussed how it had been five years since the base rent had changed; and, recommended an increase. He reminded Council that Councilmember Littleton then asked for a meeting because of the Town’s struggle with finances. Mr. Armfield advised Council that the bottom line was that instead of receiving the \$7,150 in rent that the Church received last year, it would only get \$2,900 under the Town’s offer. He noted that it was important for the church to get more money from the lot as this was an important part of their budget. Mr. Armfield explained that because the Town had rented some of those spaces to Yount, Hyde & Barbour a couple of years ago, he approached them to see if they were interested in renting the spaces; and, they said “yes” and made the church an offer that would bring it approximately \$5,000. He advised that there were a lot of technical issues associated with doing so that he was unaware of; and, noted the need to get approval of a private parking lot facility. Mr. Armfield confirmed the church wanted to pursue this; however, he suggested that it was complicated and expensive; and, noted that there was a \$2,000 filing fee for the Town. He advised that there were a couple of ways the church could pursue the private parking lot, including seeking an exception in the C-2 District or applying for a C-3 designation, which already provided for such exceptions. Mr. Armfield reiterated that it was the church’s objective to get more money for the parking lot; however, he noted that doing so was more complicated than expected.

Mr. Armfield reminded Council that the lease was an unusual one in that the Town paid the church at the end of the year, as opposed to the beginning. He advised that the Town currently owed the church \$4,900 for fiscal year 2009, plus half of the meter receipts, for a total of approximately \$6,000. Mr. Armfield noted that the Town would realize no savings in the FY '10 budget under the new lease, as the rent would not be paid until the FY '11 budget year. Town Administrator Schiro noted that he needed to confirm with the auditors that they did not adjust the rent back into the previous fiscal year. Mr. Armfield expressed hope that the economy would change by that time. He noted that the Town wanted to provide parking; and, suggested that a lease was better for all in the long-term. Mr. Armfield suggested that if the Town would agree to a flat rental fee of \$5,000, they could reach an agreement and the church could skip a change in the Town Code or special exception to allow for a private parking lot. He explained that he was looking for Council's input on how this issue could be resolved more simply than where it was currently headed. Councilmember Littleton asked whether Mr. Armfield was saying that the Town would pay \$5,000 in rent; and, there would be no other costs even if the Town were to make more money. Mr. Armfield reminded Council that this year's meter receipts were approximately \$5,800; and, expressed hope that they would increase in the future. He recommended that a flat rate be done for a couple of years until the Town could get through the current economic down turn and revenues were to pick up. Mr. Armfield expressed his opinion that he could sell that proposal to the church's finance committee.

Councilmember Patterson inquired as to the number of parking spaces in the church lot. Mr. Armfield confirmed there were twenty-nine spaces. Councilmember Patterson noted that, at \$5,000 a year, this worked out to less than \$1/day/space. She suggested that if the lot were to stay full, the meter receipts would pay the rental cost. Town Administrator Schiro reminded Council of the costs associated with maintaining and policing the lot; and, noted that the cost included more than just the rent. Councilmember Snyder reminded Council of their goal to provide parking. He advised that he would prefer Mr. Armfield's verbal offer as opposed to the one stated in the letter. Mr. Snyder advised that he would not be interested in trying to use only part of the parking lot due to the logistics; and, suggested that it made more sense to agree to a flat figure. He noted that if circumstances changed, the Town could negotiate new lease terms when the lease was up for renewal.

Mayor Davis stressed that the Town was not trying to slight the church; however, when the Council looked at the numbers, the Town was losing money. She agreed that it was important for the Town to offer parking for its visitors; and, advised that she would be willing to accept Mr. Armfield's offer. Councilmember Snyder expressed his opinion that to the extent the Town could afford to do so, it made sense to provide parking. He suggested that if the Town could not afford to do so, it could not provide it. Councilmember Littleton expressed his opinion that it was important to maintain control over parking; and, noted that the Town did not know what would happen in the future. He advised that if there was any way to approve this proposal in the budget, he would be in favor of doing so.

Councilmember Murdock asked how much the rent has been in the past. Town Administrator Schiro confirmed that last year the rent came to \$7,100. He suggested that it would be just under \$6,000 this year. Councilmember Murdock asked how much the church would receive under Mr. Armfield's proposal. Mayor Davis noted that he was offering a flat \$5,000 rate. Mr. Armfield advised Council that the Town received \$9,100 in meter receipts in FY '08. Councilmember Shea reminded Council that there was still a loss for the Town. Councilmember Snyder agreed there was a slight loss; however, he suggested it was affordable. He expressed his opinion that it was in the best interest of both parties to come to an agreement. Councilmember Murdock explained that she was trying to determine the Town's loss; and, advised that she would be in favor of accepting the proposal. Councilmember Patterson suggested the need to look at this

issue not only as a loss, but as an obligation to provide parking for the business community. She noted that while the rent would be \$5,000, the Town's cost for the lot would be closer to \$9-10,000 including maintenance. Ms. Patterson suggested, however, that to lose twenty-nine parking spaces would be an even bigger problem. She recognized that this would not be as good a deal for the church compared to what it had been getting; and, suggested that if the church was willing to work with the Town, the Council should consider not removing that many public parking spaces at this time. Councilmember Murdock asked how the operation of Seven Loaves affected the parking lot. Mr. Armfield advised Council that Seven Loaves was open from 10:00 a.m. to 12:00 noon on Mondays, Wednesdays and Fridays.

Town Administrator Schiro advised Council that if they were agreeable to Mr. Armfield's offer, he would have the Town Attorney draft a new lease. Councilmember Murdock noted the need to hear from the church's finance committee. Councilmember Snyder suggested it was the consensus of the Council to pursue the agreement based on these terms. Mayor Davis suggested the lease be added to the upcoming Council agenda. Town Administrator Schiro confirmed that he would bring the lease back; however, he advised that he did not know if it would be ready by Thursday.

Mayor Davis asked whether Council was agreeable with this proposal. Councilmember Shea advised Council that she was agreeable to seeing the details of the church's proposal, including a time frame. Town Administrator Schiro asked about the term of the lease. Mr. Armfield recommended that it be for one year. He reiterated that the money would come from the FY '11 budget. Town Administrator Schiro confirmed this would affect what the Town needed to budget for in the coming fiscal year. He reminded Council that they previously discussed the terms of the lease being for multiple years. Mayor Davis suggested that the lease could be done by the year. Mr. Armfield reiterated that he would like to do it for one year. Councilmember Snyder advised that he was willing to approve this lease for one year; however, he advised that he would like a longer lease in the future. Councilmember Littleton agreed this was fine; however, he would like a five-year agreement in the future. He noted that the economy would rebound; and, suggested that the Town should have time to recoup what it lost. Mr. Armfield advised that it helped the church when it received part of the proceeds from the parking meters. Councilmember Shea noted that she had a problem with that. She explained that the Town was renting the space; and, suggested the profits from that rental should be used to deflect the Town's costs to maintain the space. Ms. Shea advised that she had a problem with the idea of splitting the revenue from the meters; and, noted that while she was willing to go with a one-year lease, when it came up for renewal, the church would need to convince her that the Town should go back to committing itself to a loss. Mayor Davis asked that the staff advance a lease for \$5,000 in rent for one year. Mr. Armfield advised Council that he would meet with the church's finance committee; and, report back to the staff.

Council Review – August 13th Meeting Agenda

Mayor Davis noted that the only action item on the agenda was the Declaration of Covenants from Salamander Development. Town Planner Beniamino explained that this agreement dealt with the Fire Marshall's requirement to place no parking signs or large boulders on Salamander Lane. He explained that the agreement would give the Town the authority to enforce the covenant if necessary; and, noted that the County would also be able to enforce it. Mr. Beniamino explained that under the covenants, Salamander would not be allowed to park cars on Salamander Lane; and, reiterated that if they did so, the Town would have the agreement that would allow it to enforce the parking prohibitions. He reminded Council that Salamander wanted the agreement in order to avoid installing no parking signs along their entrance. Mayor Davis asked whether these covenants would apply once the resort opened. Town Planner Beniamino confirmed they would. He reiterated that this would allow Salamander to meet the Fire

Marshall's requirements, while having a tree lined road. Mayor Davis asked what would happen at the beginning of the road. Town Planner Beniamino reminded Council that that portion of the street was a public street, whereas this agreement would apply to the private portion of the street. He explained that normally, parking prohibitions on a private drive could not be enforced by the Police Department; and, noted that this agreement would allow fire trucks or other emergency vehicles to travel safely up the road. Mr. Beniamino advised Council that Salamander has agreed to police this section heavily, as they didn't want cars parked on the road from an aesthetics standpoint.

Councilmember Snyder noted that page two of the Town Administrator's report indicated that the quality of the block work for the control building at the wastewater treatment plant was poor. He asked whether this was the final finish. Town Administrator Schiro confirmed the contractor would address this issue by re-grouting the block; and, expressed his opinion that the masons did not do a good job. Mr. Schiro reiterated that Salamander would bring the masons back to correct the work. He advised that, while not that bad, the work was not what it should be. Councilmember Snyder asked whether the Town Attorney had reviewed the covenants that were previously discussed. Town Administrator Schiro confirmed that she had.

There being no further business, a motion was made to adjourn the meeting at 8:27 a.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk