



MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes
Thursday, August 11, 2011



PENDING APPROVAL

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
William Klugh, Chief of Police
Cindy C. Pearson, Economic Development Coordinator
Debbie J. Wheeler, Town Treasurer

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on Thursday, August 11, 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

Janet Clarke, a candidate for the Blue Ridge District seat on the Loudoun County Board of Supervisors, appeared before Council. She reminded them that she was the Republican nominee for this seat. Ms. Clarke distributed maps that identified the new Blue Ridge District boundaries. She encouraged the members of Council to contact her if they had any questions.

Public Presentations

Peter Dunning, of Bluemont Concerts, presented Council with a copy of their flyer for the 2011 season. He reminded them that Bluemont Concerts has partnered with the Town for sixteen to seventeen years to put on this cultural event; and, expressed his opinion that it had been a positive partnership. Mr. Dunning expressed his opinion that the support from the Council and community was amazing. He reported that the last concert of the season was complete; and, expressed his opinion that it was a wonderful season with a variety of performers. Mr. Dunning advised Council that the new location at the Middleburg Community Center ball field was by all reports positive. He further advised that the field was shaded and worked well. Mr. Dunning noted that they have had to be creative with the staging; and, advised that in the future, he would like to have a stage on site that did not have to be installed and removed each week. He explained that they would like to set up a stage and leave it for the entire season. Mr. Dunning advised that this was something they planned to look into for the future.

Mr. Dunning advised Council that every year, Bluemont obtained new artwork to announce the season; and, reported that for the last thirty years, the artwork has been done by Joe Luzerne of Winchester. He expressed his opinion that the artwork was astounding and set the stage for the event. Mr. Dunning advised that in the past, he mailed the flyers to households; however, Bluemont could not afford to do so during the last couple of years as the cost was \$22,000. He explained that the solution was to create a poster that listed all of the communities on one side, with a schedule on the back. Mr. Dunning expressed his opinion that this has worked well. He noted that Bluemont has continued to send a flyer to its donors. Mr. Dunning expressed hope to make the posters available in the future in larger quantities; and, explained that they scaled back the number this year in order to keep costs low so they could instead provide quality performers. He thanked the Council for their support. Mr. Dunning presented flowers to Economic Development Coordinator Pearson to thank her for her assistance throughout the year.

Dennis Cotter, of the Middleburg Library Advisory Board, appeared before Council to brief them on the expansion of the Library. He expressed his opinion that the Advisory Board was making good progress; and, noted that the County Board of Supervisors unanimously approved the expansion project. Mr. Cotter reported that the Advisory Board has been working with the County staff to hammer out a memorandum of understanding, which was now a gift agreement. He advised that this agreement was signed by the Library Trustees and Advisory Board on July 20th; and, would go before the Board of Supervisors on September 7th for their approval. Mr. Cotter noted that the Advisory Board has received strong support for the project from Supervisor Jim Burton, the County Library director and the Library Trustees.

Mr. Cotter reported that after the gift agreement was proposed, the Advisory Board issued a Request for Proposals for architectural and engineering services, with solicitations sent to four architectural firms. He noted that the firms of Turnure and Clites submitted a joint proposal; and, announced that the Board accepted it as the result of their understanding of the scope of work, the completeness of their response, the individuals who would do the work, their ability to work with multiple stakeholders, their price, and their references. Mr. Cotter explained that the Advisory Board felt they offered the best value and solution for this project; and, advised that they were impressed by the creativity, flexibility, enthusiasm and pricing of the Turnure/Clites team.

Mr. Cotter advised Council that the Advisory Board was almost at the end of Phase 1; and, reminded them that the project would involve four phases. He reported that the Board was moving into Phase 2, which involved the design and pre-construction activities. Mr. Cotter noted that this phase would be completed in May 2012. He advised that in September, the Advisory Board would start work on the financing phase; and, expressed his opinion that this would run through the end of April 2012, with construction slated to begin June 1. Mr. Cotter expressed hope that the project would be completed by the end of December 2012. He thanked the Council for their support. Mr. Cotter noted that he planned to attend the Council meetings each month in order to provide a short update on the project.

Councilmember Murdock advised Mr. Cotter that she would love to see the design. Mr. Cotter reiterated that the Board hired the firms of Turnure and Clites to prepare the design due to their pricing and enthusiasm. He noted that they also had strong ties to the community.

Councilmember Shea noted that she previously asked Mr. Cotter whether the gift agreement would affect the building; and, was assured that the building would remain the property of the Community Center should the library ever be removed. Mr. Cotter confirmed that the Advisory Board only owned the building for the purposes of construction. He explained that once the project was complete, the building would be turned over to the County to operate as a library; however, the Community Center would still own it. Mr. Cotter reminded Council that the lease agreement with the Community Center would continue for another seventy plus years.

Mayor Davis thanked Mr. Cotter for the updates; and, noted that she was anxious to see the project move forward.

Approval of Minutes

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that the Council approve the July 14, 2011 Regular Meeting and July 28, 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 the Town Clerk has confirmed that VDOT was coming to Middleburg next week for a follow-up meeting on the sidewalk installation project.

Vice Mayor Kirk inquired as to the status of the curb painting. Town Administrator Semmes reported that the Street Superintendent was securing bids; and, advised that he had received one bid of \$6,000. She suggested the Town should consider repainting the remainder of the curb as it was not in great shape. Vice Mayor Kirk expressed irritation that the Town must pay for this work out of its fund balance because there was no advance planning on the part of VDOT.

Town Administrator Semmes reported that VDOT was looking at what needed to be done to restore the brick sidewalk in front of Duchessa. She noted that the Town still had the bricks that were removed.

Town Administrator Semmes reported that Charlie Triplett, of Loudoun Water, reported that he has completed water level tests on Wells 2 & 3; and, hoped to test Well 4 later in the week. She noted that he reported that the wells were doing fine. Ms. Semmes explained that Mr. Triplett wanted to look at them given the dry weather.

Town Administrator Semmes reported that the Virginia Department of Health conducted an inspection of the new water treatment plant; and, advised that everything looked good. She explained that the only thing left to be done before the Town could get its operating certificate was to have Mr. Triplett draw down the water that was sitting in the new storage tank, refill the tank, and then chlorinate and test the water. Ms. Semmes further explained that if the test results were okay, the Town would get the certificate. She noted that the certificate would be issued in the Town's name, rather than Salamander's. Ms. Semmes reported that the property has now been recorded in the Town's name; therefore, the Town owned it.

Town Administrator Semmes reported that the wastewater treatment plant was going through a permit renewal process. She advised that the Department of Environmental Quality was advertising the permit renewal in the newspaper and would solicit comments for a thirty day period. Ms. Semmes explained that DEQ has indicated that if no comments were received that required a public hearing, the Town should get its permit shortly after the end of the comment period.

Councilmember Murdock questioned the status of the rainfall in Middleburg. Councilmember Snyder reported that the rainfall totals were down by a couple of inches. He advised that until recently, Middleburg had been ahead of Dulles; however, Dulles pulled ahead by a small fraction of an inch last week. Mr. Snyder noted that the fields were starting to turn brown. He suggested the Town was at the point where it should recommend the residents conserve water. Mr. Snyder noted that he did not want to alarm residents by imposing water restrictions; and, suggested it was premature to do so.

Vice Mayor Kirk recommended the Town wait until after this weekend, as they were calling for rain. Councilmember Snyder reiterated that he was recommending that residents be asked to conserve voluntarily. He expressed his opinion that the Town did not need to put anything in place. Mr. Snyder reminded Council that the Town was supposed to get a lot of rain last weekend; however, it did not.

Councilmember Snyder reported that he planned to take the wireless reader in his house to the new water treatment plant to see if it picked up a signal. He advised that if it did, he would purchase one for the Town so the staff would have access to the same data to which he had access.

Mayor Davis welcomed Chief of Police Bill Klugh to Middleburg.

Chief Klugh thanked the Council and Town Administrator for their confidence in him. He reminded them that he has been on the job for two weeks; and, was getting used to things. Chief Klugh noted that his written report this month was different than what the Council was used to; and, advised that he would try to get back to a year-to-year comparison next month. He explained that he has experienced some technology issues that he was working through. Town Administrator Semmes noted that the Chief's computer crashed. Chief Klugh expressed hope to have a new computer next week. He noted that everyone had been wonderful; and, were very welcoming. Chief Klugh advised that Mike Prince has been outstanding. He noted that former Chief Webber spent a few hours with him this week to help him get acclimated. Chief Klugh advised that the officers and staff have made him feel welcome.

Mayor Davis reported that the Sidewalk Sale was a great success. Economic Development Coordinator Pearson reported that Friday was the most successful day, followed by Saturday and then Sunday.

Town Planner Beniamino reported that both the Planning Commission and HDRC did not meet in July and August due to the lack of a quorum. He noted that the HDRC meeting has been rescheduled for next week; however, the Planning Commission would simply hold their regular August meeting.

Councilmember Murdock asked whether the Town had an ordinance that would address a dead tree that might be a danger to someone. Town Planner Beniamino advised Council that the ordinance required that someone ask permission to remove a dead tree. Town Clerk North advised Council that the recently adopted Tree Preservation Ordinance included a dead tree section.

Councilmember Murdock noted that the dead tree in question was on private property. She reiterated that it could be a danger to someone. Ms. Murdock asked whether the Town had an ordinance with regard to abandoned houses. She further asked whether there was anything in the Town Code to address maintenance issues. Town Planner Beniamino advised Council that the Town would need to partner with the County to enforce the Property Maintenance Code; and, noted that it currently did not enforce it.

Councilmember Murdock suggested the Council think about this; and, reported that there was a property in town that was vacant.

Town Planner Beniamino advised Council that there were tools in the Historic District ordinance that would address buildings that were falling down.

Vice Mayor Kirk asked whether the Town could put a lien on the property. Town Planner Beniamino confirmed that it could not do so without statutory authority.

Town Attorney Whiting advised Council that the County has entered into a cooperative agreement with the Town of Lovettsville that allowed the Town to have the same authority as the County. She noted that they did the same thing with animal control. Ms. Whiting advised Council that Loudoun County did not charge anything for doing this; and, explained that it gave them a legal basis when an employee came into the town limits to enforce the County's ordinances. She explained that Title 15.2 of the Code of Virginia authorized localities to enforce something by joint agreement when they could do so on their own. Ms. Whiting reminded Council that the citizens were already paying for County services in the town limits through their real estate taxes. She noted that there were contradictory Attorney General opinions; however, the joint agreements removed any doubt. Ms. Whiting reiterated that doing this gave citizens services that they were paying for through their County real estate taxes. She advised that this would only be a problem if there was an Attorney General opinion that was directly on point, of which there were a half a dozen such items that gave authorities to towns. Ms. Whiting noted that the County could not directly enforce town ordinances. She suggested that if the Council wished to explore this further, it would want to contract for the application of the County ordinances or for the County enforcement of the State Code.

Town Planner Beniamino reminded Council that the Property Maintenance Code was a State Code provision. Town Attorney Whiting advised Council that the Town could not drop below the State mandate; and, as long as it was not inconsistent with it, could have higher standards. She noted that Loudoun County has stretched those limits; and, recommended the Town let them litigate such stretches. Ms. Whiting expressed her opinion that cooperative agreements were a good thing.

Councilmember Murdock asked whether there was interest on the part of Council in exploring this further. Councilmember Shea confirmed she was. She reminded Council that there were some properties in town that had fuel tanks; and, suggested this could be an issue if they were not attended to due to the property being vacant.

Town Attorney Whiting advised Council that there were grants available to protect the Town's water supply sources. She noted that Lovettsville closed wells that were not in service through the use of grants; and, suggested there may be creative ways to use grants to protect the water supply sources. Ms. Whiting advised that no local match was required for such grants.

Town Planner Beniamino asked Council whether they were just talking about enforcing the Maintenance Code or whether they were talking about things like painting and general upkeep.

Town Attorney Whiting advised Council that the Town was protected under the program for leaking fuel tanks that was established under George Allen's administration. She noted that this program capped the Town's cost at \$5,000. Ms. Whiting expressed her opinion that there may be other sources of funding for addressing unused fuel tanks.

Councilmember Hazard asked how Fairfax County tore down houses. Town Attorney Whiting explained that Fairfax County was under an urban county executive form of government, which allowed them to have special regulations. She further explained that Loudoun County was not under a special form of government. Ms. Whiting noted that counties could have charters; however, urban executive governments were the only ones allowed to have more detailed codes.

Town Planner Beniamino noted that there were abatement programs that required local governments to buy the houses. Councilmember Hazard advised that Fairfax County charged the homeowners. Town Administrator Semmes confirmed that they could; however, she explained that the locality must first come up with the money and could then place a lien on the property. Councilmember Hazard expressed his opinion that there were times when it was cheaper to tear down a house than repair it.

Councilmember Shea recommended this item be placed on a future agenda to discuss the options. Town Planner Beniamino advised Council that he would e-mail them the Property Maintenance Code. Town Attorney Whiting urged the Council to use a cooperative agreement with Loudoun County; and, noted that it made the local and State appeals process available. She suggested the Town would be better off if it could get the service for free from the County.

Town Planner Beniamino noted that he would look into the cooperative agreement arrangement. He reminded Council that the County operated on a complaint only basis; and, did not proactively enforce the Code. Mr. Beniamino explained that an individual must go to the County office to sign a formal complaint. Town Attorney Whiting noted that most programs operated on a complaint basis due to tight budgets.

Reports of Town Committees/Council Liaisons

Councilmember Shea reported that the Go Green Committee was lacking a few members. She explained that one member was resigning; and, noted that they were already short by one member. Ms. Shea advised Council that the Committee was talking about advertising to solicit members. She noted that they wanted to approach members of groups, such as Goose Creek, that may be interested in serving on the Go Green Committee.

Councilmember Shea inquired as to the status of the Middleburg Volunteer Fire Department. Mayor Davis noted that Paul Draisey, Treasurer of the Fire Department, sent his apologies; and, explained that their representatives were not able to attend the Council meeting. She read a letter from Mr. Draisey that indicated that the career staff had returned to the Middleburg station as of last Sunday, under a service agreement that spelled out some protocols. Ms. Davis noted that the letter apologized for any confusion and explained that the career staff was still on duty to serve Middleburg and Aldie even though they left the immediate area. She advised that Mr. Draisey indicated that the demolition of the fire station was taking place; and, that it was anticipated that construction would start quickly. Ms. Davis advised that Mr. Draisey would provide updates on the project's progress as they received them from the contractor.

Vice Mayor Kirk noted that the construction was very loud. She further noted that they were starting work at 6:30 a.m. Councilmember Murdock noted that they were not allowed to start construction before 7:00 a.m. Town Planner Beniamino asked that Ms. Kirk contact him when she heard the construction starting early.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council add item XIB to the agenda.

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)

Action Items (non-public hearing related)

Council Approval – Ordinance pertaining to disposal of Town Property

Town Clerk North reminded Council that they discussed this ordinance during their last work session. She further reminded them that they requested a couple of minor amendments; and, advised that they have been included in the draft before them.

Councilmember Snyder moved, seconded by Councilmember Shea, that Council adopt an ordinance to establish Town Code Chapter 5 pertaining to the disposal of Town property.

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)

Town Attorney Whiting commended the Town Clerk on her excellent work in drafting the ordinance.

Council Approval – VDH Planning/Design Grant Application

Vice Mayor Kirk moved, seconded by Councilmember Snyder, that Council authorize the staff to apply for a planning/design grant through the Virginia Department of Health's Office of Drinking Water for the development of plans for the replacement of the two-inch water lines in the Ridgeview Subdivision.

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

Meter Relocation Fee

Town Clerk North reminded Council that they discussed this item during their last work session; and, asked for information regarding the cost to relocate meters. She reported that Loudoun Water has estimated it would take two hours to review a meter relocation request, which would equate to approximately \$135. Ms. North further reported that the Town Planner expressed his opinion that in seventy-five percent of the cases, no site plan would be required; therefore, there would be no engineering component. She suggested that if an engineering review was required, it could probably be completed in one hour, which would cost approximately \$185.

Town Clerk North reminded Council that during the work session, the Town Administrator recommended there be a maximum fee so an applicant would know the most he would be charged. She advised that the staff has recommended that the fee be established at actual costs plus a ten percent administrative fee, with a maximum fee of \$500.

Councilmember Murdock expressed her opinion that the recommendation was fair. Councilmember Snyder expressed his opinion that the recommendation covered what was discussed during the work session. Mayor Davis expressed her opinion that it was good that an applicant would know the range of the fee. The Council agreed to advertise the ordinances for public hearing.

Amendment to Council's Rules of Procedure – Policy for Placing Items on Agenda

Councilmember Murdock noted that the staff did not offer a recommendation for which option was better. Town Clerk North advised Council the staff was not sure how strict the Council wanted to be in setting a policy for placing items on the agenda. She noted that she reviewed the agenda items for the past year to see how many individuals would be coming to the members of Council to solicit a sponsor under each of the two options. Ms. North reiterated that she was not sure how often the Council wanted individuals to approach them seeking approval to place an item on the agenda. She advised that this was why the staff offered both options; and, explained that it was the Council's choice as to how strict they wished to be.

Councilmember Snyder advised that he preferred the first option. He asked for an understanding of what items could be placed on the agenda under the statutory provision. Town Attorney Whiting explained that the most common one would be a land use application, where an individual would have the right to seek permission to do something. She noted that the Council and Planning Commission could not act on such items without holding a public hearing; however, they did not have the option to not set a public hearing. Ms. Whiting advised that, years ago, there was a resolution granting the Town Administrator the authority to automatically advertise such public hearings. She noted that the Council liked to control its agenda; and, reminded them that their practice has been that they did not advertise items for public hearing until they came before them conceptually. Ms. Whiting advised that there were advertising requirements for fees, budget adoptions, and budget amendments. She explained that there were a number of items in which the Council could not act without a public hearing; and, advised that those items would be treated as statutory items.

Councilmember Snyder noted that most of the things he was talking about were mundane items, such as proclamations. Town Attorney Whiting advised that this was why a lot of bodies used a consent agenda. She explained that, in those cases, if someone did not want to approve an item on the consent agenda, they would remove it so it could be considered under a roll call vote.

Vice Mayor Kirk advised Council that she preferred the first option.

Town Clerk North suggested that if the Council preferred the stricter option and they did not want to be contacted by multiple individuals wishing to place items on an agenda that they consider implementing a procedure that would require the individuals to contact her. She further suggested that she could then send Council an e-mail to see if anyone wanted to sponsor the item. Ms. North advised that if she did not receive a positive response from anyone, the item would not be placed on an agenda; and, if she did, it would be. Council agreed it would like to implement such a procedure.

Mayor Davis summarized that the Council preferred the first option, with the addition that the Town Clerk would notify the Council when a request was received.

Information Items

Vice Mayor Kirk announced that the Upperville Fire Department would hold a breakfast on August 14th.

Councilmember Shea reported that a member of the community was participating in the MS Walk. She noted that she had a collection jar at Second Chapter Books if anyone wanted to contribute.

Town Attorney Whiting announced that the Loudoun Museum has resumed its participation in Leesburg’s First Friday events. She reported that they would have a speaker that would require a sizable hall in September. Ms. Whiting encouraged Council to look for the event announcements; and, expressed her opinion that this speaker would draw people from throughout Loudoun County.

Closed Session – Consultation with Legal Counsel

Vice Mayor Kirk moved, seconded by Councilmember Murdock, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(7) for consultation with legal counsel and briefings by staff members pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body; and, for consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Vice Mayor Kirk further moved, seconded by Councilmember Murdock, that this discussion be limited to the Colandrea fence proceedings. Vice Mayor Kirk further moved, seconded by Councilmember Murdock, that Town Administrator Semmes, Town Attorney Whiting, Town Planner Beniamino, and Police Chief Klugh attend the closed session. Vice Mayor Kirk further moved, seconded by Councilmember Murdock, that the Council thereafter reconvene in open session for action as appropriate.

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)

Mayor Davis asked each member of Council to certify that to the best of each member’s knowledge (i) only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and (ii) only such public business matters as were identified in the motion by which the closed meeting was convened were heard, discussed or considered in the closed meeting, which each member so did.

There being no further business, a motion was made to adjourn the meeting at 7:26 p.m.

APPROVED:

ATTEST:

Betsy A. Davis, MAYOR

Rhonda S. North, MMC, Town Clerk