



MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes
Thursday, October 8, 2009
Town Office, 10 W. Marshall Street
6:00 PM



PENDING APPROVAL

PRESENT: Mayor Betsy A. Davis
 Vice Mayor Darlene Kirk
 Councilmember Trowbridge Littleton
 Councilmember Judith Pryor Plescow
 Councilmember Mark T. Snyder

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

ABSENT: Councilmember Catherine “Bundles” Murdock
 Councilmember Lisa Patterson
 Councilmember Kathy Jo Shea

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting on Thursday, October 8, 2009 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 6:00 p.m. She led Council and those attending in the Pledge of Allegiance to the flag.

Public Comment

Rick Stoutamyer, 4062 Roberts Circle, Marshall, Virginia, introduced himself as the new Administrative Director of the National Sporting Library. He noted that he has inherited the art museum project; and, reminded Council that there were differing opinions on how to meet the Town’s sidewalk ordinance and maintain the historic character of the property. Mr. Stoutamyer invited the Town Council and members of the staff to visit him at the Library so he could show them what they did and where the museum would be located. He advised that he has lived in Marshall for twenty years; and, sold rare books in Middleburg so he was familiar with the area. Mayor Davis welcomed Mr. Stoutamyer to his new position.

Approval of Minutes

Councilmember Snyder moved, seconded by Councilmember Plescow, that Council approve the September 10, 2009 Regular Meeting minutes; and September 24, 2009 Work Session meeting minutes as amended.

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

Staff Reports

Town Administrator Schiro reported that the wastewater treatment plant's substantial completion date has been moved back to the end of January; with the date for the water treatment plant remaining in December. He reminded Council that the Town would be operating both the existing and new treatment facilities simultaneously. Mr. Schiro reported that the gravity sewer main issue has been resolved as the main could fit within the existing easement. He advised Council that Salamander has requested a partial bond reduction for the two facilities; and, noted that the Town's engineers were reviewing the expenditures. Mr. Schiro advised that once the review was complete, he anticipated making a recommendation to the Council.

Town Administrator Schiro reported that he would like to sell some surplus equipment, consisting of a utility body truck and police car, which the Town was no longer using. Vice Mayor Kirk asked whether the Town would also sell the second (pick-up) truck. Town Administrator Schiro advised Council that this truck was used to read water meters. Vice Mayor Kirk asked whether it was worth keeping the truck to read meters four times a year. Councilmember Snyder asked whether it made more sense to pay the individual who performed this function to use his own truck; and, advised that he could accept either option. He noted that the Town was paying for insurance and maintenance of the truck versus paying mileage. Town Administrator Schiro confirmed the second truck could be sold as well; and, advised that in terms of condition, the second truck was in better condition than the older utility truck. Vice Mayor Kirk asked that the staff explore this possibility. Councilmember Snyder asked whether there would be any problems in terms of appearance by having the individual use his personal vehicle. Town Administrator Schiro expressed his opinion that everyone knew the individual very well. Vice Mayor Kirk noted that he normally parked the truck and walked. Town Administrator Schiro confirmed the Town could offer him a vehicle allowance. Vice Mayor Kirk suggested that the truck be sold if the Town could get something for it. Town Administrator Schiro expressed his opinion that it could; and, noted that the truck was not in bad shape. He noted that the utility truck had a lift gate; however, the Town did not use it. Vice Mayor Kirk asked whether the Street Superintendent could use the utility truck. Town Administrator Schiro advised that the truck was not in good enough shape for his use. Council agreed to sell the two pieces of equipment as proposed; and, directed the staff to investigate the sale of the third. Town Administrator Schiro noted that since the Town was outsourcing the utility operations, there was no use in having the equipment.

Town Administrator Schiro reported that he was having difficulty getting proposals for the Town's snow removal contract; and, advised that previous contractors were not interested. He reported that he has advertised for bids, with responses due November 4. Councilmember Snyder expressed his opinion that one would think contractors were hungry given this economy. Councilmember Littleton noted that he would make some phone calls. Town Administrator Schiro noted that the contractors were not used often; however, when it snowed, the Town did need them.

Vice Mayor Kirk thanked the Town Administrator for scheduling the Health Center Advisory Board meeting. She noted that she received the agenda packet.

Vice Mayor Kirk asked the Police Chief to have his officers check vehicle stickers, particularly at the rental properties; and, noted that she has observed a number of out-of-state tags on residents' cars. She also asked that they address vehicles that parked facing the wrong direction; and, noted that this past weekend, she observed two vehicles – one on Route 50 and one on Federal Street – that were parked facing the wrong way. She advised that she has also observed this on Marshall Street. Ms. Kirk reiterated her request that the officers address this problem; and, noted that neither of the vehicles she observed this weekend had been ticketed, even though one was on the main street for at least an hour. Chief Webber confirmed that he would address these issues.

Economic Development Coordinator Pearson reported that the draft Arts Council calendar had been placed on Council's desk. She advised that the Arts Council Committee planned on sending a press release out on the activities they were working on within the next couple of weeks.

Town Planner Beniamino noted that a sentence was omitted from his written report, making it confusing. He explained that the Salamander site plan amendments were approved, with conditions, by the Planning Commission. Mr. Beniamino noted that Salamander would submit a set of revised plans for signature.

Town Treasurer Wheeler explained that her financial report was just distributed as she was ill last week. She asked the Council to call her if they had questions after reviewing it. Vice Mayor Kirk noted that she had performed a quick review; and, advised that it looked great. Councilmember Littleton agreed the report was great; however, he noted that the details were not exciting. He expressed his opinion that some items, such as the meter revenue, were scary. Councilmember Snyder noted that in reviewing the utility budget versus spending, the Town spent \$100,000 more than it has received. Town Administrator Schiro noted that the water billing was done on a quarterly basis. Town Treasurer Wheeler confirmed that revenues would increase next month. Vice Mayor Kirk noted that the water bills just went out. Mayor Davis expressed her opinion that the parking meter revenue identified for last year probably included two months, as the Town has never received that much revenue in one month before.

Councilmember Snyder noted that his only question on the utilities report was related to the back wash for Well 4 at the water treatment plant. He reminded Council that the report indicated the Town used 84,000 gallons of water in July for back flushing. Mr. Snyder asked how this figure affected the sewer flow numbers. He further asked whether the water from the flushing went into the wastewater system. Town Administrator Schiro confirmed that some did go into the wastewater system. Councilmember Snyder asked how this affected the system's loss. Town Administrator Schiro explained that he basically took the number of gallons produced, minus the backwash; and, compared it to the gallons inflowing into the plant to determine the system loss. He reiterated that some of the inflow would include gallons used for the back flushing. Mr. Schiro reminded Council that the biggest fluctuation in the loss was based upon rainfall; and, explained that when the Town experienced wet weather, it had a lot of infiltration in the collection system, which drove the inflow into the plant. He expressed his opinion that the average system loss was 30,000 gallons. Mr. Schiro noted that system fluctuations could be due to roots in the collection system, the Fire Department's withdrawal of water and items such as additional pumping when a well was down and needed to be refilled. He reminded Council that, in the latter case, the water was shown as production; however, it was actually stored. Mayor Davis asked whether the staff was able to get portable meters for use by the Fire Department. Town Administrator Schiro reported that Loudoun Water had portable meters the Town could use; and, confirmed that he would talk with the Fire Chief about doing so. He advised Council that the tankers held 2,000 gallons of water. Councilmember Snyder suggested it would be nice if the Department's usage was shown in the report. Town Administrator Schiro reminded Council that the auditors looked at the volume of water produced versus sales, so the staff had that information. Councilmember Snyder noted that they were using a rough factor, not the actual number; and, reiterated that it would be nice to have the real number. Mayor Davis noted that it would be helpful even if the Fire Department were to log the number of times the truck was filled. Town Administrator Schiro confirmed this would give the Town a good idea of how much water they were using. Councilmember Snyder noted that they were providing a service to the community; and, did not have to pay for the water. He suggested, however, that it would be good for the Town to explain how its water was used so it could tell customers what they were paying for. Town Administrator Schiro noted that it also helped to record the efficiency of the system.

Action Items (non-public hearing related)

Council Approval – Request to waive sidewalk requirements – National Sporting Library

Town Planner Beniamino explained that after the Council work session discussion on sidewalk waivers in September, the Planning Commission discussed a fee-in-lieu-of ordinance; and, asked the staff to develop materials for their review. He noted that he has discussed this matter with Councilmember Littleton; and, suggested the Council officially refer the matter to the Planning Commission. Mr. Beniamino reminded Council that they tabled the National Sporting Library's request for a sidewalk waiver in March; and, noted that they did not formally refer the matter to the Commission. He advised that he has drafted a motion for Council's consideration to refer the matter to them and set a date for which their recommendation(s) should return. Mr. Beniamino expressed his opinion that the Sporting Library would like a resolution to this issue so they could proceed with the construction of their building; and, advised that they would rather not proceed until it was resolved.

Councilmember Littleton moved, seconded by Councilmember Snyder, that Council refer the issue of a fee-in-lieu-of-sidewalk ordinance to the Middleburg Planning Commission and direct that the Planning Commission return a draft ordinance to the Town Council on or before January 1, 2010.

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

Discussion Items

Draft Town Charter Amendments

Town Attorney Whiting reminded Council that in re-working their meeting procedures, she and the Town Clerk noted that the Charter contained an odd quorum requirement in that in the absence of the Mayor, the Council was still required to have a presence of five members to constitute a quorum. She advised that this was a super-majority requirement that she has not seen in other charters. Ms. Whiting suggested that when the Council knew it would be down a participant, it seemed odd to raise the bar to a higher majority than was otherwise required by law. She reminded them that she suggested the Town propose a charter amendment to the General Assembly in this coming session; and, noted that such amendments were special legislation that required a seventy-five percent majority vote of the Assembly. Ms. Whiting recommended that Council take any proposed charter amendments to the General Assembly as a whole package; and, explained that asking them to give scrutiny to small towns on repetitive small matters was simply asking for trouble. She reminded Council that they were required to follow a public hearing process before requesting a charter amendment, which would result in a cost to the Town; and, recommended that the Town take an expansive look at what changes it wanted to include.

Town Attorney Whiting noted that Middleburg's charter was minimal. She advised Council that she did not propose anything radical; and, noted that the first change was to update the Town's boundaries to reflect the latest metes and bounds description that incorporated the Salamander tract. Ms. Whiting further noted that she updated the references to Title 15.2, which replaced Title 15.1. Councilmember Snyder asked whether Virginia Lane needed to be included in the metes and bounds description. Town Attorney Whiting explained that each time a boundary line adjustment was done, the new parameters were recorded; therefore, Virginia Lane was picked up in the Salamander adjustment, as was the animal hospital. She confirmed that the plat recorded in 2006 was current.

Town Attorney Whiting advised Council that the Town Clerk brought to her attention that the Town of Strasburg successfully obtained a charter amendment, which she was proposing in Section 3.2 on vacancies. She explained that this language minimized some of the damages created by the Attorney General's opinion that basically held that appointed council members' votes did not count on a number of topics. Ms. Whiting noted that she had proposed to use the same language as Strasburg in order to minimize the impact of that holding to the constitutional provisions that dictated how votes were counted on appropriations greater than \$500 and other items that required the vote of a majority of the elected members. She reiterated that under the Attorney General's opinion, the vote of appointed members would not count in those instances; and, noted that the proposed language would not fight with that opinion but would limit its damage. Ms. Whiting advised that there was a split among local government attorneys regarding how this opinion should be treated; and, recommended that the Town let someone with a bigger budget pick that fight. She further recommended that the Town yield on this one. Ms. Whiting reminded Council that town charters prevailed over other general legislation, with the exception of the Constitution. She advised Council that the proposed language would kick out the odd statutes the Attorney General cited in applying the disqualification rule; and, would allow appointed members to vote on a wider variety of issues. Ms. Whiting noted that at the suggestion of the Town Administrator, she sent the draft amendments to Mark Flynn, attorney for the Virginia Municipal League, who advised that the Delegate who advanced the Strasburg fix was well regarded; and, suggested that the proposed language was the right solution.

Town Attorney Whiting advised Council that Section 3.6 would continue the provision that a quorum would consist of the Mayor plus four members of Council. She further advised that the amendment would require that in the absence of the Mayor, four members would be required to constitute a quorum. Ms. Whiting noted that she polled the local government attorneys regarding other localities charter provisions to make sure she was not running afoul of something; and, advised that it did not appear that the proposal language would do so. Vice Mayor Kirk noted that under the draft amendment, four members of Council could hold a meeting and transact business if the Mayor was absent. She asked what would happen if the Vice Mayor was absent as well. Town Attorney Whiting confirmed that four members would constitute a quorum; and, the Council would have to appoint someone to preside over the meeting. She noted that there were instances in which a higher quorum was dictated, such as with appropriations greater than \$500 or the contracting of debt. Mayor Davis asked what would happen if there was a tie during a meeting in which four members of Council constituted the quorum. Town Attorney Whiting confirmed the motion would not prevail.

Town Attorney Whiting advised Council that the amendment proposed in Section 4.1 was a practical fix; and, explained that she identified the "Town Sergeant" as the Chief of Police. She noted that she researched why Section 5.2 was included in the charter; and, found this provision did not survive in Virginia Code Section 15.2. Ms. Whiting further noted that she wanted to know what Section 15.1 previously said; and, found that it referenced the election of a Town Sergeant. She explained that this validated the appointment provision in the previous section; and, advised that since it has been deleted from the State Code, there was no reason to leave it in the Town Charter.

Councilmember Littleton expressed his opinion that the Town Attorney did a nice job with the proposed amendments. Councilmember Snyder asked whether the next action was to set the public hearing. Town Attorney Whiting confirmed that the public hearing could be held during the regular November meeting, with the request being submitted to the General Assembly by December 5. Councilmember Snyder asked whether Council could approve the amendments during the same meeting as the public hearing. Town Attorney Whiting confirmed they could. Councilmember Snyder recommended this item be placed on the agenda as both a public hearing and action item.

Town Attorney Whiting advised Council that Mark Flynn noted the importance of having a voice at the City, County and Town Committee meetings when the charter amendments were raised. She noted that the VML would cover them as best they could; however, they felt that the committee members liked having someone in attendance. Ms. Whiting recommended the Town talk to the County to determine if their legislative representative from Hefty & Wiley could cover this issue for the Town. She suggested that it would be worth sounding out the County to determine if they would be willing to push this issue. Ms. Whiting expressed her opinion that it would not require a huge presence; and, suggested it would require a five minute appearance at two meetings. Mayor Davis asked whether the Council should send a letter to the County. After some discussion, it was agreed the Town Attorney should discuss the matter with representatives from Hefty & Wiley during the Local Government Attorney's Conference scheduled for the end of this month; and, report back to Council.

Closed Session

Councilmember Littleton moved, seconded by Councilmember Plescow, 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 employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Councilmember Littleton further moved, seconded by Councilmember Plescow, that this discussion be limited to contract negotiations regarding operational funding for the water and wastewater treatment facilities. Councilmember Littleton further moved, seconded by Councilmember Plescow, that the Council thereafter reconvene in open session for action as appropriate.

Vote: Yes – Councilmembers Kirk, Littleton, Plescow and Snyder

No – N/A

Abstain: N/A

Absent: Councilmembers Murdock, Patterson and Shea

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

Mayor Davis asked the members 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 they did so certify.

There being no further business, a motion was made to adjourn the meeting at 6:57 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk