



**MIDDLEBURG TOWN COUNCIL**  
**Regular Monthly Meeting Agenda**  
**Thursday, October 9, 2008**  
**Town Office, 10 W. Marshall Street**  
**6:00 PM**



**PRESENT:** Mayor Betsy A. Davis  
Vice Mayor Darlene Kirk  
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  
Elizabeth D. Whiting, Town Attorney  
David M. Beniamino, Town Planner  
Debbie J. Wheeler, Town Treasurer  
Cindy C. Pearson, Economic Development Coordinator  
Steven Webber, Chief of Police  
N. Phil DeLeon, Town Engineer

The Town Council of the Town of Middleburg, Virginia held their public hearing and regular monthly meeting on Thursday, September 11, 2008 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis opened the public hearing at 6:00 p.m.

**PUBLIC HEARING** - Amendment to the 2008/2009 Budget

Town Administrator Schiro advised Council that the purpose of the budget amendment was to appropriate funds for two capital projects. He explained that the first project involved improvements to stabilize the road into the wastewater treatment plant prior to the construction of the new plant. Mr. Schiro reminded Council that the Town originally budgeted \$10,000 for this project; and, noted that the staff was requesting an additional \$10,000 due to the engineering work that was required and the borings that were taken. He advised that the second appropriation would provide an additional \$115,000 for the Marshall Street Water Line Replacement Project. Mr. Schiro reminded Council that \$100,000 was budgeted for this project; however, the low bid was \$206,000. He noted that the Town spent \$35,000 for the engineering design work; and, also incurred expenses for rock boring. Mr. Schiro advised Council that the amendments total \$125,000, with the source being reserves in the Utility Fund. Mayor Davis noted that these were projects the Council was aware of; and, explained that the amendments were a matter of correcting the budget to provide for their funding.

Eura H. Lewis, 116 N. Madison Street, appeared before Council in support of the budget amendment as proposed. She noted that she has concerns about using reserves for operating expenses; however, she believed it was appropriate to use them for capital projects.

No one else spoke and the public hearing was closed.

## REGULAR MONTHLY MEETING

Mayor Davis called the regular meeting to order. She led Council and those attending in the Pledge of Allegiance to the flag.

### **Public Comment**

Eura H. Lewis, 116 N. Madison Street, appeared before Council to ask whether the VDOT pedestrian project would involve the upgrade of the crosswalk. Town Administrator Schiro explained that this project involved intersection improvements at Marshall and Madison Streets. Ms. Lewis requested that the Town ask VDOT to upgrade the crosswalk and sidewalk as a part of the project. Town Administrator Schiro advised Ms. Lewis that the crosswalk and sidewalk improvements were not a part of the TEA Grant; however, the staff was pursuing other grants to improve the crosswalk.

Ms. Lewis expressed concerns regarding the draft noise ordinance; and, suggested the Council needed to take a closer look at what was being proposed. She expressed a belief that people were complaining about the motorcycles coming into Town and the associated noise; and, suggested that the drivers were respectable. Ms. Lewis advised Council that if the Town alienated them, they would stop coming to the businesses in Town. She noted that the ordinance also referenced yelling; and, reminded Council of the schools in Town. Ms. Lewis suggested the kids were in the class room all day; and were anxious to get outside and yell. She questioned whether the reference to explosive fireworks would result in the elimination of the July 4<sup>th</sup> celebration. Ms. Lewis noted that there would be a lot of construction in Town that would result in noise; and, noted that the construction would improve the appearance of Washington Street. She expressed her opinion that the ordinance was too rigid; and, noted that a reference to religious services was even included. Ms. Lewis suggested the Council should look at the draft ordinance closely to determine if it were necessary to include some of the references.

Ms. Lewis advised Council that she believed the proposed design for the Town entrance sign was very nice; however, she recommended that the ornate posts be removed and that the sign be smaller in size. She noted that the flowers were beautiful; however, she expressed a preference for grass and greenery. Ms. Lewis suggested the use of a flowering bush or mums if something of a flowering nature were desired. She reiterated her belief that the sign needed to be reduced in size. Ms. Lewis noted that the existing white sign gets dirty; and, recommended the color be changed to green.

Ms. Lewis expressed pleasure with the Treasurer's Report; and, noted that it was good that the Town had cash.

Councilmember Murdock thanked Ms. Lewis for attending the meeting. She explained that she was one of several individuals who sought to update the noise ordinance; and, advised that it was based upon concerns about the neighborhoods and building construction noises that were happening at inappropriate times such as 10:00 p.m. Ms. Murdock explained that the updated noise ordinance would be a tool for the Town. She advised that she did not say motorcycles should go away. Ms. Murdock explained that there would be construction across from Lincoln Road; and, expressed her opinion that people needed peace and quiet at night. Mayor Davis noted that the hours during which yelling would be restricted would be from 10:00 p.m. to 8:00 a.m. Town Planner Beniamino noted that the reference to religious services was under the exceptions category, meaning the ordinance would not apply to them.

**Approval of Minutes**

*Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the September 8, 2008 Work Session, September 11, 2008 Regular Meeting and September 25, 2008 Work Session meeting minutes as amended.*

Vote: Yes – Councilmembers Kirk, Littleton, Murdock, Patterson, Plescow, Shea and Snyder

No – N/A

Abstain: N/A

Absent: N/A

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

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**Staff Reports**

Town Administrator Schiro reported that the asphalt work was complete on the streets he mentioned during the last meeting. He reminded Council of their request for the placement of a deaf pedestrian sign in Town; and, advised that the Virginia Department of Transportation (VDOT) would no longer install them for a number of reasons. He noted that they also no longer install “deaf children” signs. Mr. Schiro advised Council that VDOT indicated that if someone wanted to pursue the matter further, the person with standing would need to make the request.

Town Administrator Schiro reported that VDOT has started moving the speed limit signs on Route 50. He advised that he has begun a dialogue with Loudoun County Transportation Services regarding a traffic signal at the intersection with the Fire Department’s entrance. Mr. Schiro explained that the Town must purchase, install and maintain the signal. He noted that to begin the process, the Council must adopt a resolution, which Loudoun County Transportation would review to determine if a signal was warranted. Mr. Schiro noted that they would oversee the design; however, the signal would be at the Town’s expense. Mayor Davis noted that this project was very expensive. Councilmember Murdock questioned whether there was any grant money available since this was a safety issue. Town Administrator Schiro suggested there may be some highway safety money available. Mayor Davis questioned whether the Fire Department could fund the cost. Town Administrator Schiro reiterated that there may be highway safety funds available; however, he noted that they were usually not that large. He advised that he would check on the grants that may be available.

Town Administrator Schiro advised Council that Patton, Harris, Rust & Associates has prepared the survey for the sewer main easement to the treatment that was needed. He noted that the Town Engineer has provided comments; and, PHRA was revising the plats. Mr. Schiro reported that the bank stabilization for the wastewater treatment plant road was completed in two days; and, noted that the contractor did a good job. He advised that Eastern Utilities has mobilized on site for the new water treatment plant project; and, advised that grading work should begin for the new wastewater treatment plant next week.

Vice Mayor Kirk noted that the Town Administrator expressed concern about the delays in starting construction on the wastewater treatment plant. Town Administrator Schiro advised Council that the Department of Environmental Quality had issues that were delaying the actual construction. He explained that his concerns were based upon the problems at the existing plant; and, explained that he didn’t want to make large expenditures in the existing plant. Vice Mayor Kirk advised that she wanted to make sure the problems were not related to the construction company. Town Administrator Schiro assured Council that the problem was based upon DEQ’s comments; and, explained that the engineers must redesign the head works.

Police Chief Webber reported that the Department received one hundred seventy-three calls for service in September; and, made three arrests. Vice Mayor Kirk noted that the report indicated they received five animal complaints last month. She questioned the reason for the complaints; and, noted that the number seemed high. Chief Webber advised Council that he didn't recall any dogs running at large complaints; and, noted that he would have to go back and look at the records. He advised that a few were for dogs left in vehicles; and, noted that they had nine such complaints last year during this same month. Councilmember Murdock noted the number of hit-and-run complaints. Chief Webber reported that two of those complaints have been solved; and, advised that the last one was questionable. Councilmember Murdock noted the number of calls to assist other agencies. She inquired as to the type of agencies involved. Chief Webber confirmed that such calls were related to providing assistance to the Fire Department, rescue squad, Sheriff's Department or sometimes other outside agencies. He agreed the number was high; and, advised that the officers did assist with some of the County's traffic stops that occurred late at night. Chief Webber reported that he just completed an FBI training class on domestic and international terrorism. Vice Mayor Kirk questioned whether the other officers were taking training classes. Chief Webber confirmed that Officer Wetzel was scheduled for training later in the month.

Economic Development Coordinator Pearson reported that the Middleburg Volunteer Fire Department would not hold the Sip & Savor event in November as there was not enough interest. Councilmember Murdock asked whether a report was available on the Paint the Town Pink event. Ms. Pearson confirmed it was too soon; and, explained that they were leaving the donation boxes out for a while. She noted that there was a good crowd at the event. Councilmember Murdock asked Ms. Pearson to report on the second restaurant symposium. Ms. Pearson advised Council that the French Hound hosted the second symposium. She explained that it was agreed that for two to three weekends, area restaurants would serve dishes prepared using fresh, local products. Ms. Pearson advised Council that the Middleburg Business & Professional Association would assist in advertising this event in the Middleburg Eccentric. She noted that Bendure Communications would also issue a press release.

Town Planner Beniamino reported that no applications were received for the Historic District Review Committee's consideration in October. He advised that they spent the meeting discussing self-illuminated signs. Mr. Beniamino further advised that he would have a report on this item after the Planning Commission meeting; however, he noted that the HDRC was not supportive of the idea. He reported that the Vinegar Hill site plan was the only one in the system; however, he anticipated that others would be received within the next month, including one for the property at Jay/Federal Streets. Mr. Beniamino expressed hope that the Sub-Committee would make its presentation to the Council during their October work session on the proposed expansion of the Historic District.

Town Treasurer Wheeler reported that the audit was complete; and, the auditors would present their preliminary findings during the October work session. Vice Mayor Kirk noted the revenue line item in the General Fund for the sale of property. She questioned whether the Town sold or was planning to sell any property. Town Administrator Schiro advised Council that this was a marker in the budget in the event of a sale. He reminded them of the equipment that was sold last year to help fund the purchase of a new truck.

Town Attorney Whiting reported that nothing has occurred related to the existing litigation involving the Town. She advised that she was working with the Town Treasurer to address the Federal Trade Commission's mandate regarding identity theft protections. Ms. Whiting explained that because the Town had accounts in individual's names, they were required to have reasonable protections in place. She noted that she has pulled together a couple of models; and, would work with the Treasurer to develop an acceptable policy. Ms. Whiting reported that Councilmember Shea attended the FOIA training session that was recently held in Leesburg. She

noted that, during that session, they heard about a number of items that municipalities should worry about; and, advised that she would send the Town Clerk items on records management. Ms. Whiting expressed a need to aggressively look at the Town's records retention policies. She advised that while it was painful to get rid of records, the Town needed procedures in order to be in compliance with State standards. Ms. Whiting noted that the Town Clerk has identified old contracts; and, advised that it may be tricky to determine when they should be destroyed as that destruction date could be tied to completion of performance.

Town Attorney Whiting reported that one of the topics discussed during the recent Local Government Attorneys Conference was the need to develop written rules for public comments during the meetings. She advised that while there has not been a problem in Middleburg, the Council should consider setting aside a maximum time for public comments per meeting, such as a five-minute rule. Ms. Whiting noted that they also need to think about whether to issue an open invitation for individuals to speak on any topic they wish; and, explained that it was this area where litigation has developed. She suggested that standing rules that limit public comments have provided municipalities with a defense in the event of a lawsuit. Ms. Whiting expressed her opinion that good procedures would protect the Town against future problems; and, suggested it was worth investing time to look at models. Councilmember Murdock questioned whether public comments would be a liability issue even if the Council did not respond. Town Attorney Whiting reiterated the need for a policy that limited time, place and manner of comments so as to prohibit personal attacks; and, noted that those policies have been upheld in court. She noted that this issue was up to the Council; however, she suggested that it may not be troublesome if the Council had a limit for public comments. Ms. Whiting recommended that if the Council did not want to adopt a policy, they may wish to limit public comments to agenda items. Vice Mayor Kirk asked how the Council could do so; and, noted that a citizen may not get satisfaction from a Town employee and may not know how to talk about the problem. Town Attorney Whiting reminded Council that the purpose of their meetings was to conduct Town business. She expressed concern that a citizen could share their thoughts about an individual; and, become abusive. Ms. Whiting suggested that, at a minimum, the Council should require that public comment be limited to Town business or processes. Councilmember Snyder expressed an understanding that the policy would be for the protection of the Town. Vice Mayor Kirk urged caution; and, noted that the meetings were forums for complaints. Town Attorney Whiting suggested that she bring a draft policy for the Council to consider before the Town experienced a problem. Councilmember Littleton noted that this could be a tool the Council could use if needed. Councilmember Snyder noted that if the citizen's comments were not related to Town business, the Council could not assist them. Town Attorney Whiting reminded Council that during the public hearings, people could speak within the rules; and, noted that this was required. She stressed that the policy would not diminish that part of the agenda; and, reiterated that it would be more toward non-directed talk.

Vice Mayor Kirk noted that the Council asked for movement in the Colandrea lawsuit in January. She asked whether anything has happened. Town Attorney Whiting advised Council that when she became active on that suit, items would grind to a halt. She expressed her opinion that there were other items the Council expected to be taken care of; and, noted that the Town Clerk has shared the Virginia Municipal League's report on ordinance amendments that were required as a result of the General Assembly's actions. Ms. Whiting explained that she needed to compare the existing ordinances to those mandated changes; and, advised that while some ordinances were written to update automatically, this rarely happened for all of them. She explained that she has given a higher priority to having enforceable ordinances rather than litigation. Vice Mayor Kirk reiterated that it has been a long time since this matter first arose; and, noted the need for movement.

Councilmember Snyder asked whether the staff has scheduled the next water main flushing. Town Administrator Schiro confirmed it was planned, but not yet started. He noted that Superintendent Garrett was out of Town for a couple of weeks. Councilmember Snyder reminded Council that they agreed to flush the system every three to four months, rainfall allowing. Town Administrator Schiro confirmed they did. Councilmember Patterson noted that August was a good month to note the Town's water losses; and, advised that they were still experiencing a 35-40% loss.

**Action Items**

**Council Approval** – Amendment to FY '09 Budget

*Vice Mayor Kirk moved, seconded by Councilmember Snyder, that Council approve FY '09 budget amendments totaling \$125,000 transferring funds from reserves to the Utility Fund Capital Program.*

Vote: Yes – Councilmembers Kirk, Littleton, Murdock, Patterson, Plescow, Shea and Snyder

No – N/A

Abstain: N/A

Absent: N/A

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

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**Council Approval** – Bid – Marshall Street Water Line Project

*Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council accept the low bid in the amount of \$206,100 submitted by Tessa Construction & Tech Company for the Marshall Street Water Line Replacement Project.*

Councilmember Snyder reminded Council that this line was in need of replacement, as it was insufficient to provide water service to the area residents.

Vote: Yes – Councilmembers Kirk, Littleton, Murdock, Patterson, Plescow, Shea and Snyder

No – N/A

Abstain: N/A

Absent: N/A

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

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**Council Approval** – VDOT Administrative Project Agreement – Madison/Marshall Street Pedestrian Improvements

Councilmember Patterson noted that VDOT would handle the environmental review process. She questioned whether the Town would have to handle the Department of Historic Resource review. Town Administrator Schiro expressed his opinion that there would not be a lot review by the DHR; and, explained that the work would be within the existing right-of-way. Councilmember Patterson questioned whether the Town would have to pay a match. Town Administrator Schiro confirmed the Town must cover a 20% match. He noted that the balance of the \$50,000 in Salamander proffers could be used for this purpose. Mr. Schiro expressed his opinion that very little of the match would come from the Town's coffers.

*Councilmember Snyder moved, seconded by Councilmember Patterson, that Council adopt a resolution authorizing the Mayor to sign an Administrative Project Agreement with the Virginia Department of Transportation associated with the Transportation Enhancement Grant for the Madison/Marshall Street Pedestrian Improvements.*

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

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Council Approval – Middleburg Town Council Vision for 2025

Town Attorney Whiting advised Council that a concern was brought to her attention; and, it was suggested that she review the draft Vision. She expressed concern about the use of the term “creative” when referring to the Town’s revenue stream under the Economic Strength item; and, recommended the substitution of the term “diverse”. Councilmember Littleton suggested the term “creative” simply be deleted. After some discussion, Council agreed to simply delete the word.

Town Attorney Whiting advised that her other concern was related to the reference to foxhunting in this same section. She expressed an understanding that foxhunting helped shaped the Town’s history and hardscape in a profound way. Ms. Whiting noted that, while not a legal issue, she would suggest alternate wording as follows: “Middleburg’s identity is based on its history as the foxhunting capital of the United States and its emergence as the leader in equestrian sports.” She suggested this language would combine what shaped the Town’s history with what the Town has become. After some discussion, the Council agreed to change the language as recommended, with the substitution of the word “reputation” for the word “emergence”.

*Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the Middleburg Town Council Vision for 2025 as amended.*

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

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Councilmember Murdock reminded Council of the need to identify goals for each priority. She suggested that Council identify a deadline for getting their individual goals to the Town Clerk so she could assemble them into one list for the Council’s consideration in a work session. Town Clerk North noted that, given the number of items scheduled for the October work session, Council may wish to hold the discussion on goals during its November meeting. Council agreed to e-mail their individual goals to the Town Clerk by the close of business on November 3. Councilmember Shea recommended the Council address its operating procedures at the same time.

## Discussion Items

### Draft Noise Ordinance

Town Planner Beniamino reminded Council that during their last meeting, he presented a draft ordinance for their review. He advised that the draft has now been revised based upon changes requested by Chief Webber, most notably the elimination of the section dealing with mass outdoor gatherings. Mr. Beniamino advised that the other major change was to eliminate the Town Administrator as the enforcement officer; and, to make the Police Chief or his designee the enforcement officer. He advised Council that the most pressing issue he has heard in his discussions with both the Police Chief and with representatives from Salamander Hospitality was the elimination of Sunday from construction schedules. Mr. Beniamino explained that Salamander would have to work on Sunday, particularly toward the completion of their project when the trades would be working inside the building. He reminded Council that this prohibition was inserted at the request of some members of Council. Chief Webber suggested the Council eliminate the reference to days and leave the prohibition at 7:00 p.m. to 7:00 a.m. Councilmember Snyder agreed. Councilmember Murdock disagreed; and, explained that she did not want to allow construction seven days a week. She questioned whether it was possible to allow construction on Sundays under a special exception process. Councilmember Snyder suggested that construction be limited to six consecutive days. Councilmember Murdock noted that she would have no problem allowing construction in instances in which a project was one month away from completion; however, she noted that she didn't want to let someone simply hammer on Sundays. Councilmember Snyder reminded Council that some homeowners like to do home improvement projects on the weekends. Town Administrator Schiro reminded Council that, under the proposed ordinance, construction could occur on Sundays as long as it did not generate noise. Chief Webber suggested it be allowed as long as the noise did not travel beyond the property line or cause a nuisance. Councilmember Snyder noted that he installed a deck on his house several years ago on the weekends; and, was sawing and hammering in order to do so. Vice Mayor Kirk suggested that home improvements be allowed on Sundays during reasonable hours. Town Planner Beniamino noted that there was no way to differentiate between homeowner-related and major construction projects. He expressed concern that the Council would encounter resistance once the ordinance was enforced as people may not be happy that they could not work on their deck. Mayor Davis noted that lawn mowers may be a noise someone doesn't want to hear. She suggested that noise be allowed as long as it occurred during the day. Councilmember Littleton noted that he was in the construction industry; and, advised that most companies would not work seven days a week unless there was an emergency or weather conditions required it. Mayor Davis reminded Council that the current ordinance did not prohibit construction activities on Sundays. Councilmember Murdock advised Council that she would reluctantly withdraw her request to prohibit construction noise on Sundays.

Town Attorney Whiting expressed concern about the restrictions on noise being heard across a residential property boundary or through partitions; and, noted that this prohibition was not tied to a time limit. She suggested there could be many instances when one could hear music across a boundary; and, recommended that it be prohibited only during a protected period. Ms. Whiting further recommended that the Council leave in the reference to an obnoxious nuisance at any time; and, noted that a problem could be handled under that section. She suggested that too many properties were located too close together for a blank prohibition. Vice Mayor Kirk suggested a time restriction should be included for most of the items. Town Planner Beniamino asked whether Council wanted to allow barking dogs during the day. Town Attorney Whiting recommended the Council may want to include a protected period for animals and say that they could not bark for longer than xxx minutes in any hour so there were two ways to address problems.

Town Planner Beniamino questioned whether Council wanted to apply a protected period between 10:00 p.m. and 8:00 a.m. to radio and related noise. Vice Mayor Kirk recommended that vehicle-related operations, such as horns and whistles, also have a time limit. Chief Webber recommended that that particular item be left alone. Town Attorney Whiting noted that for that particular item, there must be a fairly egregious set of facts in order to bring a charge. She questioned how one would prove a whistle was not an emergency if they had not been watching for a period of time. Vice Mayor Kirk questioned whether the item related to the operation of a motor vehicle that created a noise disturbance should include a protected time period. Councilmember Snyder expressed his opinion that the police knew how to handle those types of noise complaints. Chief Webber advised Council that the most reported complaint involved loud stereos.

Town Planner Beniamino noted that a large party would be a public nuisance. Councilmember Shea noted that she had concerns about that section; and questioned what would happen if she had six siblings, meaning they would be over the ten person limit whenever they held a barbeque. Town Planner Beniamino recommended that the restrictions on large gatherings contain a time limit. He noted that a large social gathering could become a nuisance after a certain period. Mr. Beniamino reiterated his recommendation that the gathering be taken indoors by a certain time. Councilmember Shea agreed this would make more sense. Town Planner Beniamino recommended that large outdoor parties not occur between the hours of 10:00 p.m. and 8:00 a.m., to which the Council agreed.

There was some discussion regarding keeping the various time limits in the ordinance as close together as possible. Town Planner Beniamino noted that the draft ordinance references the time of 10:00 p.m. to 7:00 a.m. for construction; and, noted that those trades start work early. Vice Mayor Kirk explained that she did not want the ordinance to contain a lot of different times to remember. Councilmember Shea noted that the general public would not read the ordinance – the Police Department would do so. Councilmember Littleton noted that the Council was giving the Police Department the tool it needed to enforce noise complaints. Councilmember Snyder recommended that the ordinance be kept simple in order to make the Police Department's job easier.

Economic Development Coordinator Pearson asked whether the proposed noise ordinance would affect the events held at the Community Center. Councilmember Snyder noted the need to protect those and the Bluemont Concerts. Town Planner Beniamino noted that this was addressed in the previous references to mass social gatherings; however, they were eliminated from this version of the ordinance. He noted that the commercial vehicle reference was revised so it would not impact Town contracted trash collections; and, recommended that similar language be inserted for the Community Center and Bluemont Concerts. Mr. Beniamino further recommended that those events be classified as Town sponsored. Economic Development Coordinator Pearson questioned whether the Town would then be sponsoring the events at the Community Center. Town Planner Beniamino recommended that the Town sponsor the Community Center and Bluemont, not necessarily the individual events. Ms. Pearson questioned whether the Town would sponsor the events at the Salamander Resort. Town Planner Beniamino explained that the proffers associated with the Salamander Resort place approval for the events under the Zoning Administrator's purview. Councilmember Murdock noted that the annual fireworks display was Town sponsored. Town Planner Beniamino noted that they were already covered under the draft ordinance. Mayor Davis questioned whether extra time would be granted for events occurring during weekends or holidays before it would be considered a nuisance. Councilmember Littleton suggested the Council was thinking as if there was a problem, when the ordinance was being proposed as a tool for the staff. He suggested the citizenry would conduct their activities; and, if someone found them to be upsetting, the Police Department would have the tools to address the problem. Councilmember Snyder suggested there needed to be a basis for

the Police Department to take action. Mayor Davis asked for the Police Chief's comments regarding the hours of restriction on weekends and holidays. Vice Mayor Kirk noted that an individual's "weekend" may vary depending on their work schedule. Chief Webber confirmed he would enforce whatever hours the Council was comfortable setting; however, he noted that he would like to keep the hours simple. Town Attorney Whiting advised Council that while the ordinance would be a tool for the Police Department, the Council must realize that if there were a neighborhood feud, the Town must be in a position to defend its choice when the officers decide not to respond to a complaint. She explained that when the officers decided to prosecute one person, but not another, the Town must be able to defend how they selected who to prosecute. Ms. Whiting noted the need to be prepared for several different kinds of situations. Councilmember Murdock noted the need to tighten the Town's ordinance. She expressed her opinion that the average person would not read the ordinance; however, their attorneys would. Town Attorney Whiting advised Council that there was good case law from the Supreme Court that addressed noise that was considered to be a disturbance of the peace. She noted that the reason many localities have gone to the use of decibels was that it gave them good protection. Ms. Whiting advised that she was not saying go with decibel measures; however, she was saying the Council needed to put meat in the ordinance so as to identify what would constitute a disturbance that could reasonably be perceived as such to the average person. She noted that it would not be easy to define; however, it must be an objective standard. Ms. Whiting advised Council that the courts would give the Town reasonable discretion in interpreting the ordinance. She reminded them of the need to protect the Town from those individuals who may seek malice.

Councilmember Murdock asked whether the staff had all of the corrections Council had suggested. She further asked where the Council was on the issue of the Community Center. Councilmember Shea expressed her opinion that exceptions two and four within the ordinance would probably cover the Community Center. Town Planner Beniamino confirmed they would not as the Community Center was not public. Councilmember Murdock noted that item four would cover the fireworks display. Councilmember Shea noted the reference to "related activities and other special public events or public activities". Town Planner Beniamino explained that the Community Center was private; and, the section referenced by Councilmember Shea was related to activities on public property. He confirmed that this item would address the Bluemont Concerts. Councilmember Snyder expressed his opinion that the Council needed to protect events which were associated with the Town. Councilmember Murdock reminded Council of the events held at the American Legion. Town Attorney Whiting suggested that if the Council ran into problems with people who were having obnoxious events at the Community Center, they may need to be prepared to amend the ordinance.

Councilmember Snyder recommended that item D, located at the bottom of page two, be revised. He expressed concern about violations for items such as whistling or singing. Mr. Snyder suggested this item needed to include a provision to identify when the activity would rise to the level of being a disturbance; and, expressed his opinion that singing and whistling of themselves were not a nuisance. Town Planner Beniamino reminded Council that enforcement would be at the discretion of the officer. Vice Mayor Kirk noted the remainder of the sentence associated with singing and whistling. Town Attorney Whiting expressed her opinion that an absolute prohibition was unreasonable; and, reminded Council that in the future, lots would get smaller and contact would be closer. She suggested the Council did not want the ordinance to become a weapon.

Vice Mayor Kirk recommended the Council and staff review the draft ordinance and e-mail their comments to the Town Planner. She further recommended this item be placed on the November work session agenda for additional comment. Town Planner Beniamino noted that the Planning Commission would discuss the matter during their next meeting to be held October 27<sup>th</sup>. He asked that Council get their comments to him prior to the Planning Commission meeting.

Councilmember Snyder recommended that Council submit comments up until the deadline for the Planning Commission agenda. Town Planner Beniamino noted that this would be October 22<sup>nd</sup>. Councilmember Littleton recommended that the Town Planner send Council a copy of the revised ordinance based upon the comments offered during this meeting. Town Planner Beniamino confirmed that he would send them a revised ordinance next week for their review.

### Proposed Entrance Sign Design

Economic Development Coordinator Pearson presented a revised drawing of the proposed entrance sign. She noted that the ornamentation was removed at the request of the HDRC who wanted the sign to be clean and simple. Ms. Pearson noted that there were a lot of steps to go through in order to complete the sign, including HDRC and VDOT approval and the adoption of a Council resolution. She advised Council that the Garden Club had funding available for the signs; and, noted that they would like to use the money before the end of the year. Mayor Davis questioned whether it was possible for the Garden Club to give the money to the Town before the end of the year, with the funds being earmarked for the sign. Councilmember Littleton suggested that Quail Run Signs give the Garden Club a cost estimate for the sign. Economic Development Coordinator Pearson noted that VDOT would also require that a maintenance bond be posted for the life of the sign. Mayor Davis noted that the hanging events signs were the same, they were just being hung side-by-side. Councilmember Murdock asked whether the sign could accommodate three event signs. Ms. Pearson confirmed that three signs would be too much for a motorist to read. She noted that if there were more than two events in a given period, she separated the event signs on both entrance signs. Councilmember Patterson inquired as to the height of the sign. Ms. Pearson advised that she was not sure, but she would get that information for Council. Councilmember Littleton questioned whether the HDRC would see the design again; and, noted that they recommended the elimination of the planter box and ornamentation. Ms. Pearson advised Council that John Ralph, of Quail Run Signs, was concerned about the removal of the planter box. She further advised that he suggested a rail be installed for security purposes if the box was removed. Ms. Pearson reminded Council that the land sloped in this area; and, Mr. Ralph felt the planter box would help stabilize the sign and would present a finished look. Councilmember Littleton suggested that, if the planter box were included, the Garden Club could maintain the plantings. He noted that the signs posts could also be inserted into concrete to help with the stability. Town Attorney Whiting noted that VDOT may have a problem with placing the posts in concrete as they want obstructions in the right-of-way to break away in the event of an accident. Mayor Davis expressed her opinion that the sign was six feet tall; and, was probably not as tall as one would think. Vice Mayor Kirk recommended the staff secure the sign's dimensions for the Council. Economic Development Coordinator Pearson noted Ms. Lewis' suggestion to change the color of the sign. She noted that while Upperville's green signs look nice, a green sign would clash with the white event signs that were attached to it. Ms. Pearson recommended the sign be painted more often to improve its appearance. Councilmember Patterson suggested it be positioned so the snow plows do not spray it when they pass the sign. Ms. Pearson noted that VDOT has suggested it be relocated; however, there was no good spot for the sign. She asked that Council e-mail her with their ideas or concerns regarding the sign design.

### Information Items

Vice Mayor Kirk announced that the Upperville Fire Department would hold a Pig Roast on October 11<sup>th</sup>; and, reminded the audience that the funds raised were for a good cause.

There being no further business, Mayor Davis declared the meeting adjourned at 7:38 p.m.

APPROVED:

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Betsy A. Davis, MAYOR

ATTEST:

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Rhonda S. North, MMC, Town Clerk