



**MIDDLEBURG TOWN COUNCIL
Monthly Work Session**



**Thursday, October 23, 2008
Town Office, 10 W. Marshall Street**

6:00 p.m.

REGULAR WORK SESSION

PRESENT: Mayor Betsy A. Davis
Vice Mayor Darlene Kirk
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
Cindy C. Pearson, Economic Development Coordinator

ABSENT: Councilmember Trowbridge Littleton

The Town Council of the Town of Middleburg, Virginia held their regular work session on Thursday, October 23, 2008 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis called the meeting to order at 6:00 p.m.

Closed Session – Personnel Matter & Contract Negotiations

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(1) and (7) for discussion of the assignment, appointment, promotion, performance, demotion or salaries of specific employees and consultation with legal counsel and briefings by staff members 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 negotiation of a contract with Loudoun Water for the operation of the Town's water and sewer operations, including the associated staffing details. 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, Murdock, Patterson, Plescow, Shea and Snyder
No – N/A
Abstain: N/A
Absent: Councilmember Littleton
(Mayor Davis did not vote as there was no tie to require her vote)

Mayor Davis asked that Council certify that to the best of each member's knowledge that (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.

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

Council Approval – Loudoun Water Contract

Councilmember Snyder moved, seconded by Councilmember Patterson, that Council authorize the Town Administrator to move forward with negotiating and refining the contract with Loudoun Water.

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

Council Discussion – **Inspection services - Water and wastewater treatment plant projects**

Town Administrator Schiro advised Council that he believes, as does the Town's consulting engineers, that the Town needs a site inspector on the water and wastewater treatment plant projects. He explained that the Town needs eyes on the work to assure its accurate completion. Councilmember Snyder asked whether full-time inspection services were needed; and, noted that this would require \$135,000 to come out of the water budget at a time when the Council was talking about wanting to reduce the rates. Town Administrator Schiro expressed hope that Salamander Hospitality would pay part of the cost. Councilmember Snyder agreed with the need for construction oversight; however, he questioned the cost. Vice Mayor Kirk recommended that the Town Engineer would be a good choice for doing the inspections. Town Administrator Schiro advised Council that he didn't want to pay an engineer's rate; and, noted that there were inspectors who could ensure that what is constructed in the field is in compliance with the approved plans and specifications. He reminded Council that, currently, the only eyes on the project are those working for Salamander. Mr. Schiro advised that while they may well intend to make sure the work is done properly, contractors tend to take shortcuts if they have an opportunity. He noted that the Town would not find out about those shortcuts until it owns the systems. Town Attorney Whiting expressed her opinion that having an on-site inspector would simplify the relationship with the people on the ground. She noted that Turner Construction and Salamander Hospitality don't necessarily have the same interests. Vice Mayor Kirk reminded Council that the Town had an on-site inspector for its last plant project; however, it didn't help. Councilmember Snyder suggested this was because the on-site inspection services were only performed after there was a problem. Town Attorney Whiting confirmed the Town was already in a crisis by the time the inspector came. She noted that the inspector was also not full-time.

Councilmember Patterson reminded Council of the problems associated with the Liberty Street Parking Lot. She further reminded them that the Town used part-time inspection services; and, over spent the project by \$400,000. Ms. Patterson suggested that would not have occurred if the Town had used a full-time inspector who was reporting back to the Council on a regular basis. She noted her experience in this area when working for VDOT; and, suggested the Town could not trust someone who was not working for it to ensure the project would be done properly. Ms. Patterson noted that Turner Construction was a good company; however, they were trying to make money. She suggested that unless a trained individual was looking at the construction on a daily basis, there could be an issue. Mayor Davis questioned whether a full-time inspector was needed. Town Administrator Schiro reminded Council that they were talking about \$12+ million worth of infrastructure. He noted that earlier in the week, a pressure test was performed on the lines; and, a representative of Anderson said they were okay. Mr. Schiro stressed that he was not saying they were not telling the truth; however, he noted that the individual performing the pressure test was not motivated to err on the Town's side. He noted that the additional problem with this project was that most of it was underground.

Councilmember Shea asked whether Salamander would cover the inspection costs. Town Administrator Schiro advised that he would like them to; however, he didn't know if they would. Councilmember Murdock questioned whether there would be a conflict if they did. Town Administrator Schiro confirmed there would not; and, explained that the matter would be handled as a bill-back. Councilmember Snyder confirmed the inspector would work for the Town. Town Attorney Whiting advised Council that, while not a legal conflict, it would be hard to convince Salamander that this was their obligation.

Vice Mayor Kirk asked where the money would come from. She further asked about the length of the contract. Town Administrator Schiro confirmed the contract would be for fifty-four weeks; and, was not to exceed \$139,500. Vice Mayor Kirk questioned whether the inspector would be on site full-time. Town Administrator Schiro confirmed he would. Councilmember Patterson asked where his office would be located. Town Administrator Schiro expressed hope that he could use a part of Salamander's construction trailer space. He noted that, if not, the inspector could use the Council Chambers. Councilmember Patterson cautioned the staff to make sure the Town did not get charged for the office space. Councilmember Murdock asked what would happen if the construction required more time. Town Administrator Schiro confirmed that fifty-four weeks was the term of the construction contract. Councilmember Snyder confirmed this was always a risk. He recommended the inspection contract contain a stand-down clause that would allow the inspector to stand down in the event the contractors were not active on the site.

Town Administrator Schiro asked for the Town Attorney's thoughts on the idea of cost-sharing with Salamander. Town Attorney Whiting expressed her opinion that it would not be productive; and, reminded Council that there were no attempts to include it during contract negotiations. She suggested the Town would not have closed the contract if the issue had arisen. Vice Mayor Kirk asked why inspection services were not thought of earlier. Town Administrator Schiro advised Council that the contract oversight/inspection services were a part of what PHRA was doing, with the Town's consulting engineers reviewing their work. He noted that the Town's consulting engineers were getting the sign-offs on requests for information and submittals; however, he noted that even PHRA will not have an inspector on site. Mr. Schiro explained that this was a concern. Town Attorney Whiting reminded Council that the agreement between the Town and Salamander was structured to make it their responsibility to deliver the facilities as defined in the contract. She noted that the Town's consulting engineers encouraged this relationship so that Salamander and their contractors would take the lead. Ms. Whiting suggested it would have been incompatible to say they must pay for the Town to have a full-time on-site representative on top of that.

Vice Mayor Kirk asked about the funding source to cover the contract costs. She further asked whether a budget amendment would be necessary. Town Administrator Schiro confirmed that a budget amendment would be required. He noted that the funds would come from reserves in the Utility Fund. Mr. Schiro advised Council that the Town could try for less than five day a week services. Vice Mayor Kirk asked, in that instance, how the inspector would know what days to be on site; and, suggested that was a no-win situation.

Mayor Davis asked what guarantee the Town would have if a problem developed a year down the road. Town Administrator Schiro confirmed there were sureties to protect against defects. Mayor Davis expressed her opinion that if Salamander was not getting what it was told by PHRA was needed, it could result in the wastewater treatment plant having a problem that could lead to its failure that could then negatively affect their five-star resort. Town Administrator Schiro explained that he was not concerned about something that could lead to a failure, but rather something that could result in a maintenance and operational headache for the Town. He reminded Council that the filtration system at the water treatment plant was not installed correctly; and, has never functioned correctly resulting in maintenance and operational issues for the Town. Mayor Davis asked who would be responsible for correcting it if this were to happen. Town Attorney Whiting reminded Council that the facilities would have a one-year warranty. She noted that even though the contracts were negotiated through a permit process covered by the Public Procurement Act, there were strict limits on actions on the bonds. Ms. Whiting expressed her opinion that this was a reason for assuring that what goes in the ground is correct. Vice Mayor Kirk asked what would happen if the inspector said there was no problem; and, later it was determined there was a problem. Town Attorney Whiting advised Council that there was never 100% assurance; however, there was value to the Town in having someone with expert skills saying that what was installed was what should be installed. Mayor Davis asked what would happen if the Town paid for inspection services and there was still a problem. Councilmember Snyder reminded Council that the Town would be getting better assurance that it would be getting what was specified; and, could have a higher degree of confidence that it was done correctly. He expressed his opinion that this was worth a great deal to the Town. Councilmember Plescow asked whether the inspector would be licensed and bonded. Town Administrator Schiro confirmed he would. Councilmember Plescow noted that, in that case, if the inspector made a bad call, the Town would have recourse. Town Attorney Whiting suggested the Town may have two avenues of recourse. She suggested that if the facilities were not in compliance with the plans and the Town discovered this soon enough, it could demand what the contract required. Ms. Whiting further suggested that if the inspector blew the inspection, there may be recourse for his negligence. Councilmember Plescow noted that it was beginning to sound like there were concerns that there were no protections. She explained that she wanted to make sure the Town had recourse if there were problems. Town Administrator Schiro advised Council that the inspector would report back to the consulting engineers.

Councilmember Patterson noted that the Town's contract was with Whitman, Requardt – its consulting engineers. She further noted that they were not building the plants. Ms. Patterson asked what authority the Town would have to stop the work if the inspector found something wrong. Town Attorney Whiting advised Council that there was no way to make the process seamless. She suggested that, in that event, the Town would have to notify Salamander of the problem; and, advise them that it would stand on its contract rights. Ms. Whiting confirmed the Town's inspector would not be able to interfere with the job site. Councilmember Patterson noted that the facilities would not be the Town's until they were accepted. Town Administrator Schiro noted that the Town would have more power over the wastewater treatment plant project. Councilmember Patterson noted that she has been in the position of seeing something being built wrong; and, having no ability to stop it. She questioned whether the inspector would have the ability to stop any work he saw being built incorrectly; and, suggested that, in the end, the Town could always not accept the facilities. Councilmember Snyder suggested this was an issue of

having confidence in the Town's management to go to Salamander and say "we have a problem". Councilmember Patterson noted that it was an issue of having confidence in the contractor and getting them to stop without hitting Salamander with a change order because the inspector interfered with his work. Town Attorney Whiting reiterated that the Town would need to go to Salamander and say this has been brought to our attention and we are bringing it to yours since you have the contract authority. She noted that the Town would have to remind Salamander that it has an obligation to the Town at the end of the day; and, that it may be better to solve the problem immediately. Vice Mayor Kirk asked what recourse the Town would have if they did not. Councilmember Patterson suggested the Town would document the problem and not accept the facilities; and, explained that the staff would have to make them understand that to be the case. Mayor Davis noted the good working relationship with Salamander. She recommended that the staff explain the process up front; and, expressed an assumption that Salamander will want to address any problems right away. Town Administrator Schiro expressed his opinion that the Town would be able to get their attention. Councilmember Murdock questioned whether the Town needed permission for the inspector to go on the site. Town Administrator Schiro expressed his opinion that the Town had this right. Vice Mayor Kirk recommended the staff discuss this matter with Salamander and seek their assistance. Town Administrator Schiro confirmed he has already done so. He explained that Salamander did not have a problem with having an inspector – only with paying for it. Mr. Schiro advised Council that he approached Salamander about paying the cost; and, advised that they didn't say no. Mayor Davis questioned whether they would be willing to share the cost if they didn't want to pay the entire amount. Town Attorney Whiting expressed her opinion that there was a chance to build a relationship so that Salamander would have confidence that it was getting what it was obligated to provide the Town. She suggested that it would be cheaper for Salamander to resolve something immediately. Councilmember Snyder reminded Council of the problems the Town has experienced with other construction projects. He noted that he knew the inspection services were necessary, not optional. Councilmember Murdock agreed.

Town Administrator Schiro requested a vote of Council to proceed. Vice Mayor Kirk asked whether a public hearing was necessary. Town Administrator Schiro confirmed a public hearing would be needed for the budget amendment. He noted, however, that the Town would be billed on a regular basis for the inspection services so there was time to schedule the public hearing for November. The Council held some discussion regarding asking Salamander to pay part or all of the costs. Town Attorney Whiting suggested that given that Salamander does not have on-site inspections from PHRA, this could be used as a basis to ask them to share the cost. She recommended that she and the Town Administrator discuss how best to approach this request.

Councilmember Snyder moved, seconded by Councilmember Murdock, that the Council authorize the Town Administrator to seek an appropriate commitment from Salamander to pay a reasonable portion of the inspection services cost.

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

Council Discussion – Charter Positions

Councilmember Murdock asked which positions were charter employees. Town Administrator Schiro confirmed he was a charter employee, as was the Town Clerk, Chief of Police, and Treasurer. He noted that the Town Attorney was also a charter position; however, she was not an employee. Councilmember Murdock advised Council that she did not want to change the charter positions; however, she asked whether there was a mechanism that would allow those positions to report to the Town Administrator. Town Attorney Whiting reminded Council that they have shifted this in the administrative provisions of the Town Code a couple of times. Councilmember Murdock questioned whether the charter positions could legally report to the Town Administrator. Town Attorney Whiting confirmed they could. She reminded Council that the Town Charter basically makes hiring a Town Administrator an option for the Council. Ms. Whiting advised that the Council can delegate authorities to him to the extent they choose. Councilmember Murdock suggested this occurs informally; and, expressed her opinion that there needed to be a clearer definition and identification of duties. Town Attorney Whiting reminded Council that whenever they revisit the Employee Handbook, they get tied up in knots. She noted that the employee classifications don't overlap cleanly; and, suggested the Council should not steer away from making them better. Councilmember Murdock noted that the Police Chief saw the item on the agenda and was concerned. She noted that he has worked for a couple of Administrators that were not appropriate for him to report. Vice Mayor Kirk noted the Council changed the system so the Chief reported to the Mayor because of problems with previous Administrators. Councilmember Snyder noted that if there was a problem, the Mayor would then come to the Council. Councilmember Murdock suggested the Town Treasurer and Clerk should report to the Administrator. Councilmember Shea expressed concern about having the Treasurer report to the Administrator. Councilmember Snyder agreed the Council needed checks and balances. Councilmember Shea recommended the Clerk should also report to the Council. She further recommended the Council not change the charter personnel. Councilmember Murdock noted that she was thinking about issues such as holidays – not large personnel issues. Councilmember Shea recommended the Council expand the Town Administrator's job description so he could take care of issues such as holidays. Town Administrator Schiro noted that he does so currently.

Town Clerk North advised Council that in her experience as the Clerk of Council in Front Royal, she was appointed by the Town Council; however, she also reported to the Town Manager. She noted that the Town Manager prepared her performance evaluation and then shared it with the Council to determine if they wished to make any changes. She explained that she recognized that the Town Manager was just as much her boss as was the Council. Ms. North noted that this allowed everyone to be in the loop; and, was a system that worked well. Vice Mayor Kirk expressed her opinion that the Council did not need to change the charter positions. Councilmember Murdock advised that she like the system described by the Town Clerk. Vice Mayor Kirk noted that Mr. Schiro was the Town Administrator; and, agreed the employees should all report to him. Town Administrator Schiro advised Council that for the purposes of leave, etc. he does handle those items. He noted that evaluations have not been done in his tenure; although, forms have been prepared and were awaiting Council review. Councilmember Murdock reiterated that all of the employees should report to the Town Administrator. Councilmember Snyder encouraged Councilmember Murdock to lead a review of the Employee Handbook. Councilmember Murdock noted that the Council just completed such a review. Vice Mayor Kirk noted the need to amend the Handbook if the Loudoun Water contract is approved. Councilmember Murdock advised Council that she was good with the decision that has occurred. She noted that she was concerned about the day when Mr. Schiro would no longer be Town Administrator. Ms. Murdock noted that the Town has a good management team in place; and, reiterated that she was concerned about the future. Vice Mayor Kirk suggested the Employee Handbook be amended to clarify that the employees report to the Town Administrator.

Mayor Davis advised Council that her interpretation of the Council's discussions was the Town Administrator would prepare the evaluations and bring them back to Council for the charter employees. Vice Mayor Kirk questioned whether raises would be based upon the results of the evaluations. Town Administrator Schiro confirmed they have not been in the past, as the Town has not had an evaluation process in place. He noted that, thus far, the raises have been across the board; although adjustments were offered for some positions. Vice Mayor Kirk questioned whether there would be a monetary incentive associated with the evaluations. Town Administrator Schiro suggested this matter be discussed further in a future work session. He expressed his opinion that, in an organization of this size, it would be ridiculous to tie pay raises to an evaluation. Mr. Schiro recommended that evaluations be an opportunity to give bonuses, not raises. He suggested that given an organization consisting of ten employees, there was no use in assigning a pay grade system. Vice Mayor Kirk explained that she wanted the Town Administrator to feel free to reward those employees who were doing an outstanding job. Town Administrator Schiro confirmed if he did so, he would come to the Council first.

(Town Attorney Whiting left the meeting.)

Council Discussion – Holiday Parking Meter Schedule

Economic Development Coordinator Pearson reminded Council that last year, they approved free parking in the municipal lots from December 10-31st. She noted that the meters were bagged with a holiday bag. Ms. Pearson asked whether Council would like to offer free parking in the municipal lots again this year; and, noted that she has additional bags should they wish to do so. Council agreed to offer free parking in the two lots only. Economic Development Coordinator Pearson asked whether Council would like to make this a regular policy or whether they would like to address the question each year. Councilmember Snyder recommended that Ms. Pearson raise the question one more time and then ask to make it a permanent policy. Councilmember Patterson asked whether the Council wanted to approve free parking for the same dates. She recommended that it start earlier. Economic Development Coordinator Pearson advised Council that the reason she didn't recommend starting it sooner was because on December 6th the staff must install "no parking bags" on the meters for the Christmas in Middleburg event. She further advised that if the holiday parking were started earlier, it would mean the removal and installation of new bags. Council agreed to start the free holiday parking on Monday, December 8.

Council Review – Report on Loudoun County Community Action Board

Councilmember Shea noted that she has provided Council with a written report. She advised that there was a workshop on Community Development Block Grants that could benefit Middleburg; and, noted that she will attend. Ms. Shea reported that a group was being formed to assist low income residents with their tax preparations; and, noted that AARP was a part of this endeavor. She advised that the State has prepared a handbook on energy efficiency; and, noted that she would be providing this to the Go Green Committee. Ms. Shea reported that the Community Action Board was also assembling volunteers to do repairs for low income residents. She noted that she would stay on top of these items; and, would attempt to integrate them into the community. Mayor Davis recommended that as items become available, they be inserted into the newsletter. Councilmember Shea noted that, with regard to the tax preparation services, she asked whether there would be a transport to take residents from Middleburg to Loudoun County. She advised that while there would not be, there may be an opportunity to bring the service to Middleburg at a specific time.

**Council Discussion – Holiday schedule/work session conflicts -
November and December**

Councilmember Murdock recommended that the Council not hold its monthly work session on Thanksgiving Day; and, questioned whether the Council wished to hold it sooner. Councilmember Snyder noted that the Council has the same issue with the December work session; and, recommended that the two be combined so one could be eliminated. Mayor Davis reminded Council that frequently they have cancelled the December work session. Vice Mayor Kirk asked whether the Council had a lot to deal with in November. Town Clerk North reminded them that they were scheduled to discuss their goals during the November work session. Councilmember Snyder recommended the Council hold the November work session; and, cancel the December one. Mayor Davis reminded Council that they could always schedule a work session in December if it was determined one was needed. Councilmember Murdock recommended Council hold the work session on November 20 and eliminate the December one.

Councilmember Murdock recommended that as long as the Council was looking at the calendar, they discuss the holidays. She asked whether the Town always grants the Friday after Thanksgiving as a holiday. Councilmember Snyder confirmed it did. Councilmember Murdock noted that there was a holiday scheduled for half a day on December 24th and a full day on December 25th, but nothing on December 26th. Vice Mayor Kirk reminded Council that the Town followed the County's holiday schedule. Town Clerk North suggested that Loudoun County follows the State's holiday schedule; and, noted that last year, when the Governor extended the holiday, Loudoun County followed suit. Councilmember Patterson noted that the County did not always follow the State's schedule.

Mayor Davis noted for those members who were new to Council that the Town Council throws an annual Christmas party for the staff. She recommended the Council set the date. After some discussion, they agreed to hold the Christmas party on Friday, December 12th. Councilmember Murdock agreed to organize the event. Mayor Davis asked the Town Administrator and Town Clerk to notify the staff of the date.

Discussion

Town Administrator Schiro reported that he would be on vacation November 5th-10th; and, requested permission to miss the work session on November 10th. He noted that the Clerk would be up to speed on the agenda items. Council agreed the Administrator could miss the meeting.

Vice Mayor Kirk inquired as to the status of the Health Center Advisory Board meeting. Town Clerk North advised that the date of November 17th worked for four of the five members that she has been able to contact thus far. She noted that she was still trying to reach one more. Vice Mayor Kirk agreed to go with the date of the 17th. She noted the need to hold the meeting in November so a recommendation on donations could be presented to Council in December.

Councilmember Shea announced that there would be a fundraiser on November 25th for the Loudoun County Housing Authority. She noted that she would e-mail the details to Council.

Councilmember Patterson announced that there would be a fundraiser on Nov. 8th at the Community Center for the Elementary School's music program. She noted that it would be an adult's only party, featuring the band Souled Out. Ms. Patterson explained that they were trying to raise \$20,000 for the music program; and, noted that software was previously donated with the plan for the County to fund the computers in the coming year. She further noted that due to budget constraints, the County will not be able to fund them. Ms. Patterson advised that, once the computers are purchased, the program will require no future funding.

Mayor Davis recommended that the Council members who were strongly in favor of constructing the next hospital on Route 50, contact members of the Board of Supervisors and encourage Town residents to do the same. She noted that the more people who let the Supervisors know of their desires, the more apt they would be to go in that direction. Ms. Davis expressed her opinion that a decision would be made in November; and, suggested that now was the time to encourage the County to follow their Comprehensive Plan. Councilmember Murdock suggested that the next hospital should serve Loudoun County's citizens; and, should not be put close to the existing one. Mayor Davis noted the argument regarding competition; and, suggested the hospitals would still be in competition if one were located on Route 50. Vice Mayor Kirk reminded Council that if a new hospital were constructed in the Broadlands, the INOVA Hospital would lose beds. Mayor Davis noted that other new and planned medical facilities would also go away, including the emergency room in Cornwell and the new medical building that was constructed based on the Comprehensive Plan. Councilmember Murdock expressed her opinion that the proposed location in the Broadlands doesn't help anyone. She recommended that the next hospital be built based on the Comp Plan recommendations. Councilmember Snyder expressed his opinion that it would be horrible if citizens could not invest based on the Comp Plan recommendations. Councilmembers Murdock and Snyder noted the need to send a message to the members of the Board of Supervisors. Councilmember Murdock reported that the Mayor spoke very eloquently during the Planning Commission meeting on this item.

Vice Mayor Kirk announced that the Upperville Fire Department would hold a breakfast on November 9.

There being no further business, Mayor Davis declared the meeting adjourned at 7:19 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC
Town Clerk