



**MIDDLEBURG TOWN COUNCIL**  
**Regular Monthly Meeting Minutes**  
**Thursday, November 12, 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 Catherine "Bundles" Murdock  
Councilmember Lisa Patterson  
Councilmember Judith Pryor Plescow  
Councilmember Kathy Jo Shea  
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  
Cindy C. Pearson, Economic Development Coordinator  
Debbie J. Wheeler, Town Treasurer

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting on Thursday, November 12, 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**

George Lengauer, President of Seven Loaves Services, noted that they were a non-profit organization comprised entirely of volunteers who provide food to families in need in Middleburg and the surrounding area. He thanked the Council of their generous gift of \$10,000 to support their mission. Mr. Lengauer reported that Seven Loaves fed eight hundred eleven families last year, consisting of approximately three thousand two hundred individuals. He further reported that those families made four thousand nine hundred eighty-four visits to the pantry, with over two hundred twelve thousand pounds of food being distributed.

Mr. Lengauer advised Council that he was also the Chairman of the Windy Hill Foundation for Family Development. He thanked them for their donation of \$2,000 for that program. Mr. Lengauer explained that the purpose of this program was to assist academically at-risk elementary school children; and, noted that they do so by having adult tutors work twice a week with students on a one-on-one basis. He expressed his opinion that both programs have achieved great success; and, noted that they were made possible through the generosity of the community. Mr. Lengauer expressed appreciation for the Town government's recognition of the value of these programs and for their financial support. He also expressed his appreciation to the Health Center Advisory Board for their support as well. Councilmember Snyder expressed his appreciation to Mr. Lengauer's for reporting to the Council; and, noted that this feedback was something the Council needed.

Martha Cotter, secretary of Middleburg FISH, reminded Council that this program involved volunteers who manned the phones and took people to their doctor's appointments. She noted that the requests for temporary financial and medical assistance have been huge; and, advised that while they usually received two calls a day, one day last week they received eleven. Ms. Cotter expressed her opinion that it was overwhelming as to the number of people who were desperate, some of whom have had their power turned off resulting in no water as well. She advised that they were grateful to the Health Center Advisory Board and Town Council for their \$2,500 donation to the FISH Program. Ms. Cotter noted that they were a small organization that did a lot of good in the community.

Martha Cotter and Punkin Lee, members of the ad-hoc Middleburg Arts Council, appeared before Council to brief them on the history of this program. Ms. Cotter explained that the State has developed a program entitled "Minds Wide Open", which was a celebration of women in the arts. She expressed her opinion that it would be fun to participate in this program; and, advised that she contacted the Town's Economic Development Coordinator who promptly organized a discussion group. Ms. Cotter reported that they would like to participate in this initiative, which ran from March to June of 2010. She suggested that this occur through a partnership of non-profit organizations and Town entities. Ms. Cotter advised that while she at first felt overwhelmed by the prospect, there was a lot of energy on the ad-hoc committee; and, advised that they were ready to move ahead. She asked for the Council's consideration in making the Middleburg Arts Council an official advisory board of the Town. Ms. Lee, President of the Middleburg Business and Professional Association, explained that the State would like for each town to have one event associated with this program. She noted that some localities have arts centers to develop this, whereas Middleburg did not. Ms. Lee reported that the Arts Council would like to have an event every month; and, suggested that they not only celebrate women in the arts, but also be business driven. She noted that they planned to display art in Middleburg's restaurants and professional buildings; and, suggested this would be an excellent partnership. Ms. Lee reported that the first event would start in March with a play presented by an all female cast of the Middleburg Players. She further reported that the events would end with the Upperville Horse Show. Ms. Lee expressed her opinion that the Arts Council was getting a good response from the community. Ms. Cotter noted that they were not trying to leave the men out; and, reiterated that this was an initiative started in Richmond. Ms. Lee thanked Mr. Lengauer and Ms. Cotter for all they did for the community; and, noted that Middleburg was lucky to have them.

Mayor Davis thanked everyone for their work, including Mr. Lengauer, Ms. Cotter and Ms. Lee; and, noted that Middleburg was blessed to have individuals who cared so much about their community. She advised that many times people had ideas, but if there was no one to do the work, they didn't happen. Ms. Davis expressed her opinion that volunteers made the difference between a community that just survived and one that thrived.

Councilmember Murdock asked Mr. Lengauer about the food situation for the upcoming holidays. She further asked what Seven Loaves anticipated in the form of needs. Mr. Lengauer confirmed that their availability of food was good; and, noted that the area churches and individuals have donated substantially to the pantry. He reminded Council that their biggest source of food was what they purchased with cash donations. Mr. Lengauer noted that the Blue Ridge Food Bank had food warehouses throughout the area; and, advised that they typically purchased two to three thousand pounds of food from their Winchester warehouse each week. He reported that they also collected deli, bread and produce items from area supermarkets. Mr. Lengauer confirmed the food availability was good this year as compared to last. He reminded Council that they also distributed USDA food one week a month; and, noted that while this used to consist of mainly cheese and peanut butter, it now included fourteen different items. Mr. Lengauer reported that this was the first week they did not offer some type of meat. He advised

that they would be distributing turkeys to their patrons for Thanksgiving, although he was unsure about Christmas. Mr. Lengauer advised that the value of buying from the food pantry was that one dollar went four to six times further. He reiterated that they were in good shape from a supply basis. Mr. Lengauer recognized the Upper Crust Bakery and Middleburg Tennis Club who allowed them to use their walk-in freezers to store frozen food when the Seven Loaves' freezers were over capacity. He reported that they were starting to see the number of clients build, which was usual for the holidays. Mr. Lengauer further reported that they have provided assistance to one hundred twelve families thus far this week; and, anticipated serving another fifty to sixty by the end of the week. Mr. Lengauer noted that another source of food for Seven Loaves was the grocery stores when they did a frozen food reset; and, explained that when competitors competed for shelf space, sometimes products were removed. Mr. Lengauer advised that they may pick up several hundred pounds of frozen food as a result. He reiterated that the community was generous in sharing their freezer space; and, noted that Seven Loaves had a number of commercial sized freezers.

Councilmember Murdock thanked Seven Loaves, the Windy Hill Foundation for Family Development and Middleburg FISH for their work in the community. She noted that Middleburg FISH has started fund raising for the first time. Ms. Murdock expressed a wish that there was a way to spread the word to help the local charities. Councilmember Shea expressed her opinion that there would probably be another volunteer fair in January; and, suggested this would be a good way to do so. Mr. Lengauer reported that they received six to eight names of volunteers last year. Ms. Cotter reported that Middleburg FISH got two or three names as the result of the fair; and, expressed her opinion that it was very worthwhile. Vice Mayor Kirk reported that she also received thank you notes from the Middleburg Fire Department, Middleburg Community Center, Middleburg Library Advisory Board and Cherry Blossom Breast Cancer Fund for the Town's donations. She advised Council that the Town also sent a check to the American Legion as well to be used toward the cost of their new roof.

**Public Hearing** – Amendment of Town Charter

No one spoke and the public hearing was closed.

**Action Items related to Public Hearing** – Amendment of Town Charter

*Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve the amendments to the Town Charter as proposed. Councilmember Snyder further moved, seconded by Vice Mayor Kirk, that Council direct the staff to forward these amendments to Delegate Marshall for presentation to the Virginia General Assembly.*

Councilmember Snyder noted that he spoke with the Town Attorney prior to the meeting regarding Section 3.2; and, reminded Council that this change was in reaction to a reference to the State Code. He expressed his opinion that it was unfortunate that this interpretation required the treatment of appointed members differently in some cases than elected ones. Mr. Snyder noted since they were ineligible to vote in some circumstances, the Council would have to rely on the Town Attorney to point out those instances. He reiterated his opinion that this was an unfortunate development in Virginia law. Councilmember Murdock asked whether the Council could vote upon that particular amendment. Councilmember Shea explained that only a constitutional amendment could cure that issue entirely; and, it could not be corrected through the charter.

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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### **Approval of Minutes**

*Councilmember Snyder moved, seconded by Councilmember Littleton, that Council approve the October 8, 2009 Regular Meeting minutes and the October 22, 2009 Work Session 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 during the last work session, he and Councilmember Littleton were directed to evaluate the Health Center building. He advised that for the time being, they have implemented dehumidifiers in the building to remove the moisture so they could then begin treating the moldy areas. Mr. Schiro reported that there was a lot of mold in the Police Department and Solstice offices. He advised Council that this moisture was the result of a portion of the building being located under grade; and, noted that this was simply a collection area. Mr. Schiro reminded Council that the Town paid for a substantial amount of work to divert the water away from the building a couple of years ago; however, it obviously was not working as there was still moisture present. He expressed his opinion that given the situation, the water would not be eliminated without the use of dehumidifiers. Mr. Schiro reported that the building's downspouts and gutters also needed to be addressed; and, advised that they were checking for clogs in that system. He noted that another issue that should be looked at was the replacement of the windows; and, advised that they were drawing moisture. Mr. Schiro reminded Council that the Town painted the windows last year; however, the paint was chipping due to the rotten sashes. He suggested that the furnace needed work, if not replacement; and, advised that it was not set up to allow the heat to be controlled in the different units. Mr. Schiro noted that a new furnace would be more efficient; and, could be controlled in the individual units. He suggested that this was a long-term recommendation that could be discussed further during a work session. Mr. Schiro reported that Councilmember Littleton was putting together cost estimates for the Council's review. He noted that Councilmember Murdock had issues with the Police Department space; and, advised that those could be discussed now or in a work session.

Councilmember Murdock asked for a report from Councilmember Littleton. Councilmember Littleton advised that he was still working on the numbers. He expressed his opinion that the dehumidifiers would take care of the mold; and, noted that it was coming from the moisture. Mr. Littleton suggested the need to remove the moisture from the building as soon as it came in; and, advised that the dehumidifiers needed to be kept on at all times. He advised that because the building was located in a hole, the Town could spend thousands of dollars on the exterior; and, still have a problem. Mr. Littleton suggested the best, most inexpensive way to treat this was to try the dehumidifiers for six months to see if the walls stayed dry; and, if they did, to repaint them with a moisture resilient paint that contained a mold retardant. He reiterated his opinion that this

should address the problem. Mr. Littleton suggested the furnace had a lot of history; and, that the Town needed to get price quotes on a replacement. He advised that he would see if he could get cost estimates on the windows; and, suggested that aesthetically they would look the same as the existing windows. Mr. Littleton recommended the use of a thermo pane window; and, that the sashes be left in place to maintain the building's historical character. Councilmember Snyder asked whether the sashes were rotting. Councilmember Littleton advised that the rotted sections could be repaired; and, suggested that if the entire window was removed, the Town would experience interior repair work in each room. Councilmember Snyder asked whether the rotted sashes could be repaired. Councilmember Littleton confirmed that the rotten sections would be replaced with new wood; and, advised that the rot usually occurred on the bottom. He expressed his opinion that the majority of the windows did not have rot or could be repaired easily. Mr. Littleton expressed his opinion that the building was generally in great shape, but needed updating. Vice Mayor Kirk recommended the Council handle each item on a case-by-case basis. Councilmember Snyder asked whether additional drainage was needed. Councilmember Littleton advised Council that he did not know where it would be run without totally changing the entire area. He suggested that this was a small problem that could be handled; and, recommended it be done using the easiest, least expensive and most non-evasive solution. Councilmember Snyder asked whether the Town needed to augment the gutters. Councilmember Littleton confirmed it did; and, noted that some were bent and full of debris. He advised Council that water was coming from the back area into the building where the Solstice offices were located. Mr. Littleton advised that this area needed to be dried and the water redirected. Councilmember Snyder advised that this report made him feel better; and, expressed his opinion that Councilmember Littleton had done a thorough job of inspecting the building.

Councilmember Murdock agreed. She noted that she was in the Police Department earlier in the day; and, advised that the walls were full of mold. Ms. Murdock noted that this was a health concern; and, suggested that she did not want to put an employee in that environment. Councilmember Littleton noted that the mold would be scrapped; and, the wall repainted with moisture proof paint.

Councilmember Shea advised Council that she spent time on the internet looking up mold remediation; and, noted that there were companies that could do an evaluation. Town Administrator Schiro noted that such a company was hired to do mold remediation in the Town Hall. Councilmember Murdock suggested that it needed to be done in the Health Center building. Councilmember Shea expressed her opinion that the problem was worse in the Police Department offices. Councilmember Murdock expressed her opinion that a quick fix was needed. Vice Mayor Kirk noted that Councilmember Littleton was working on it. Councilmember Murdock suggested that if it were not fixed soon, the Town needed to find an alternate location to move the Police Department so the downstairs offices could be gutted. Councilmember Littleton asked Councilmember Murdock what she meant by "gutting" the office. Councilmember Murdock suggested this space needed a lot of remediation; and, expressed her opinion that the asbestos must be removed. Councilmember Littleton advised Council that the asbestos was fine as long as it was not disturbed. He noted that if it were disturbed, it would be extremely expensive to remove. Mr. Littleton reiterated that the asbestos was safe as long as it was left alone. Councilmember Snyder recommended that it be monitored to ensure it was isolated. Councilmember Murdock expressed her opinion that the building contained two bad health issues that must be addressed. Councilmember Littleton confirmed that he would address the situation.

Town Administrator Schiro reported that the Town has experienced issues with the west end pump station; and, explained that a circuit tripped, burning the breakers. He confirmed that electrical work would be done to address this on-going problem; and, advised that while doing so, a sensor would also be installed for the wet well as it over flowed again. Councilmember Snyder noted that the Town has been addressing this issue for twenty plus years. Town Administrator

Schiro advised Council that the quick fix was to install a float to warn the staff when the water level was rising. He advised that the cost for this work would be approximately \$7,200; and, noted that funds were budgeted under the Sewer Fund.

Town Administrator Schiro reported that no bids were received for the snow removal contract. He advised that he and the Street Superintendent have spoken with two local contractors about being on stand-by to clear the Town's parking areas in the event of a snow emergency. Vice Mayor Kirk asked who the staff has contacted. Town Administrator Schiro confirmed that it was Mr. Smith, a local man, and Broy & Sons; and, noted that both have a bobcat and truck that would do in a pinch. Councilmember Littleton noted that he also had a bobcat and dump truck; and, suggested his crews could assist. Town Administrator Schiro noted the need to have someone on call after VDOT finished plowing the streets. He advised that the Street Superintendent had a plow blade for his truck; however, he reminded Council of the need to clear the parking lots if there was a large amount of accumulation. Mr. Schiro advised that the Town had an area for the dumping of the snow. Councilmember Littleton advised Council that he would talk with his crews about providing assistance.

Town Administrator Schiro reported that the Town has advertised the three surplus vehicles for sale, with bids due tomorrow. Councilmember Patterson advised the Town Administrator that there was a local business (Corums in Marshall) that did snow removal in Middleburg for the homeowners associations. She noted that they handled snow removal for her parking lot. Town Administrator Schiro noted that he received calls from contractors; however, they lost interest when they learned the size of the job. He reminded Council that the mobilization of the equipment was the greatest portion of the cost. Mr. Schiro confirmed that he would check with the local company.

Town Administrator Schiro reminded Council that the Town Clerk distributed a memorandum regarding Loudoun County's expansion of the Thanksgiving Holiday to include a half a day the Wednesday before. He advised that if there was no objection from Council, he would like to extend liberal leave to the Town Hall employees rather than opening the office for a half a day. Mr. Schiro advised that the employees would be required to use comp time or annual leave. Vice Mayor Kirk asked whether anyone would be in the office that day. She advised that this was no problem as long as the closure was posted, along with emergency numbers. Councilmember Murdock asked about the Christmas holiday. Town Clerk North advised that the County has declared the Christmas holiday to include all day Christmas Eve, as opposed to half a day, in addition to Christmas Day. Vice Mayor Kirk asked whether Loudoun County has extended the New Year's holiday to cover New Year's Eve. Town Clerk North confirmed they have not.

Vice Mayor Kirk asked what happened to the pedestrian signs in the cross walks. Chief Webber confirmed that one was damaged beyond repair during the Gold Cup. He advised that he did not know where the other was located. Chief Webber asked whether there were any extra signs. Town Administrator Schiro advised Council that he planned to order two more; and, reported that the extra sign should be at the Town Shop. Chief Webber advised that as much as they were run over, the signs were pretty durable. Vice Mayor Kirk noted that some signs were made to pop back up. Councilmember Murdock expressed her opinion that the signs were working; and, suggested that motorists were stopping more. Councilmember Shea confirmed that they were stopping at the intersections with the signs, but not in between. Councilmember Snyder noted that he was less likely to get rear ended when he stopped. Vice Mayor Kirk asked whether more signs were needed. Mayor Davis noted that the Council has previously discussed placing one by the bakery. Economic Development Coordinator Pearson advised Council that motorists generally stop when she walked out into the crosswalk. Councilmember Patterson advised that cars go by her when she was standing in the crosswalk. Mayor Davis suggested that the extra sign be placed by the bakery during the holidays once the new ones were received.

Councilmember Murdock asked the Police Chief about the number of children who were trick-or-treating in the Ridgeview Subdivision during Halloween. Chief Webber noted that it was hard to estimate; however, he believed there were at least nine hundred children on the streets. Councilmember Littleton noted that the Community Center fed three hundred fifty-four kids. Vice Mayor Kirk expressed her opinion that the number of children was down from last year. Mayor Davis suggested the number at her house was up. Councilmembers Patterson and Shea noted that no one came to their houses. Chief Webber expressed his opinion that the children concentrated on the areas with lots of houses. Councilmember Shea noted that a statement in the newspaper indicated that the limit for trick-or-treating was children twelve years old. She asked whether this was the law. Chief Webber confirmed this was in the Town Code. Vice Mayor Kirk advised that she could not tell a child's age when they came to the door. Councilmember Shea suggested this was too young; and, recommended that children in middle school should be allowed to trick-or-treat. Councilmember Snyder noted that this was a guideline; and, suggested it was a tool for use by the Police Department in the event of a disturbance.

Councilmember Shea inquired about the date for the Foxcroft Alumni Weekend. Councilmember Murdock reported that it would start on April 16, 2010, with events occurring on Friday and Saturday. Councilmember Patterson noted that they were making a big deal out of the event in an attempt to get people back to the school.

Town Planner Beniamino reported that the Planning Commission met on November 10<sup>th</sup>; and noted that he had hoped they would have a resolution on the sidewalk ordinance at that time. He explained that the Commission has asked for additional information from the staff, which he and the Town Engineer would present on November 23<sup>rd</sup>.

Vice Mayor Kirk asked how the staff was progressing in cleaning up the zoning violations around Town. Town Planner Beniamino confirmed that he has received some voluntary compliance on the sign issues; however, he was still experiencing problems with the outdoor display of merchandise. Vice Mayor Kirk expressed her opinion that the sidewalks were crowded. Town Planner Beniamino advised that he would make another sweep; however, he explained that some merchants removed the items and then put them back out when he left. Vice Mayor Kirk expressed her opinion that this hurt other businesses. Mayor Davis suggested that it be allowed if the items were not impeding foot traffic. Councilmember Shea disagreed; and, noted that there was a bench on the street that she must step around. She suggested that if someone did not know it was there and ran into the bench, it would result in a liability. Town Planner Beniamino noted that the problem was that if one person was violating the ordinance, it was difficult to enforce against someone else. He reminded Council that the rule was that it was not allowed at all. Mr. Beniamino expressed hope to address this problem before the Christmas in Middleburg event when there would be a lot of pedestrians on the sidewalks. He suggested that they had enough problems given the signage that was allowed on the sidewalks. Mr. Beniamino noted that the issue was that some merchants were respecting the rules, while others were not. Councilmember Patterson asked whether the merchandise was placed in the right-of-way on the sidewalk. Town Planner Beniamino noted that it depended upon the location; and, advised that some was on the sidewalks, with at least one on private property. He noted that some of the merchandise was pushed up against a building, whereas others were actually on the sidewalk. Councilmember Murdock suggested the Council decide which determination to make; and, that they then make that clear. Town Planner Beniamino advised Council that the issue was the next step. He reiterated that the ordinance prohibited the outdoor display of merchandise. Councilmember Shea expressed her opinion that the ordinance was clear. She suggested that the issue was if the merchants allowed the merchandise to remain after being asked to remove it, whether the Council wanted the staff to issue a citation. Ms. Shea further suggested that the question was whether the Council was willing to back up the staff if they enforced the ordinance. Councilmember

Murdock noted that she had mixed feelings; and, noted that business was down. She advised that, on the hand, some businesses were respecting the rules; and, it was not fair to them especially if they wanted to put items out as well. Town Planner Beniamino reminded Council that property owners spent a lot of time working with the HDRC and money on their building facades; and, advised that when someone put out merchandise in front of the sidewalks, this defeated the purpose. Vice Mayor Kirk noted that it was also a safety issue; and, advised that there was not enough room for two people to pass. Town Planner Beniamino noted that he could not enforce the ordinance against one business, but not another. He reminded Council that one vendor who was selling on the sidewalk did not even have a business in Town. Vice Mayor Kirk advised that she did not want pedestrians walking in the road because they could not access the sidewalk. Councilmember Littleton expressed his opinion that this was not an issue because the ordinance was the ordinance. He suggested that if Council wanted to change the rules, they needed to change the ordinance. Mr. Littleton noted that the Council could not say who it would be enforced against and who it would not. Councilmember Snyder suggested the Council was saying it would support the staff when it pursued the violations, including citations if necessary. Chief Webber noted that the last couple of times the staff worked on this issue, they found that the items were of different sizes and shapes. He noted that when the violators were asked to remove the merchandise, they pointed to others who also violating the ordinance. Mayor Davis noted that in one case, the offender did not even have a Town business. Councilmember Shea explained that the staff could not make exceptions; and, must enforce the ordinance or not. Councilmember Murdock advised that she was in favor of enforcing the ordinance. She noted that with the holidays approaching, the Town was hoping to have more people present. Ms. Murdock advised that she would vote to enforce the ordinance. Councilmember Littleton noted that it was not an issue of a vote since the Town had a rule in place. Councilmember Plescow noted the need to support the staff as they enforced the ordinance. Town Planner Beniamino noted that some merchants may complain when he did so.

Town Treasurer Wheeler reported that she checked on the Certificate of Deposit rates from Middleburg Bank; and, advised that for a minimum \$100,000 deposit the rate was 1.81% for twenty four months and 2.59% for forty-eight months. She noted that there was a penalty of six months interest for an early withdrawal. Vice Mayor Kirk recommended the Council wait for the report from Councilmember Littleton on the Health Center building before making a decision on the Health Center funds.

Councilmember Murdock noted that the meals and lodging tax revenues were down; and, encouraged residents to use these services more. Vice Mayor Kirk expressed hope that the revenues would improve during the holidays. She noted that she had a question related to the payment to Loudoun Water; and, advised that she would e-mail it to the Town Treasurer.

**Action Items** (non-public hearing related)

**Council Approval** – Access Agreement – Dominion Power, Town & Salamander Development

Town Administrator Schiro reminded Council that this agreement involved a shared easement with Dominion Power for power access to the primary well on the Salamander property. He noted that the engineers have reviewed the proposal to make sure the separation was appropriate; and, confirmed that it was. Mr. Schiro further noted that the Town Attorney has reviewed the agreement language. Councilmember Snyder asked about the location of the easement. Town Administrator Schiro confirmed that the easement was located from the end of the property to the last well. He presented a sketch of the shared easement area; and, noted that if separate easements were required, more trees would have to be removed. Councilmember Snyder noted that Salamander has marked the existing utilities behind the houses on Stonewall Drive. Town Administrator Schiro confirmed that the markings were for the underground service to the water

treatment plant; and, advised that this service would be located within an existing easement. Councilmember Snyder inquired as to the width of that easement. He noted that area residents were asking him questions about the stakes. Mr. Snyder advised that he would like some information on this easement so he could answer their questions. Town Administrator Schiro expressed his opinion that the easement was twenty feet in width.

*Councilmember Snyder moved, seconded by Councilmember Shea, that Council adopt a resolution approving an access agreement between the Town, Dominion Power and Salamander Development, LLC and authorizing the signature of the same.*

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 – Bond Reduction – Water & Wastewater Treatment Facilities – Salamander

Town Planner Beniamino reminded Council that the Town Code allowed for four bond reductions per year, upon the submission of proof that the work was complete. He advised that Salamander has asked for a reduction of both the water and wastewater treatment facilities bonds. Town Administrator Schiro advised Council that the bond reductions were in the amount of \$1.004 million and \$1.6 million respectively. Town Planner Beniamino reported that this would leave \$855,600 and \$1.683 million on each respective bond. He confirmed that proof has been received from the contractors that the work was completed and that they have received payment for it. Mr. Beniamino advised that Whitman Requardt has reviewed the request and agreed to the amounts.

Councilmember Snyder asked whether the remaining bond amounts were sufficient to obviate the risk of completion. Town Planner Beniamino advised Council that each of the original bond amounts contained sufficient contingency factors. Councilmember Snyder repeated his question as to whether the remaining bond amounts were sufficient. Town Planner Beniamino confirmed that they were based upon the evaluation of Whitman Requardt. He noted that he was relying upon their expertise.

Councilmember Murdock expressed her opinion that each of the bond reductions was off by 1%. Town Planner Beniamino advised Council that he recommended reductions in the amounts that were completed according to the engineers. Councilmember Murdock noted that Salamander was asking for more of a reduction. Councilmember Snyder advised Council that he was comfortable with the reduction as long as the remaining bond amounts obviated the risk of completing the projects. Town Planner Beniamino reiterated that the engineers recommended a reduction of 49% and 54% respectively; and, advised that he did not see an objection on Salamander's part. He noted that the staff has received a new fee sheet for the water treatment plant which showed that more work was completed after the reduction request was submitted. Town Administrator Schiro advised that the staff has verified that the contractors have been paid for their work. Councilmember Shea asked whether the amounts recommended in the draft motion were 49% and 54%. Town Planner Beniamino confirmed they were. Vice Mayor Kirk noted that this was not what the memorandum stated. Town Planner Beniamino explained that Salamander requested a reduction of approximately 55% and 50%; and, he did the actual math.

*Vice Mayor Kirk moved, seconded by Councilmember Shea, that Council approve a reduction in the amount of \$1,617,000 in the performance bond posted by Salamander Development, LLC for the wastewater treatment facilities and a reduction in the amount of \$1,004,400 in the performance bond held for the water treatment facilities.*

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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Vice Mayor Kirk reminded Council of the e-mail they received from the Town Treasurer related to their Comcast bills. She asked whether Ms. Wheeler was able to get an answer to her question. Town Treasurer Wheeler confirmed that Councilmember Plescow gave her a copy of her bill; however, she noted that she gave her a copy of the front of the bill and she needed the back. She advised that she was still waiting to hear from Comcast. Ms. Wheeler confirmed that she still would like to know what other customer’s bills stated; and, expressed hope that the only bill that was printed wrong was the Town’s. She noted that she needed the back page from the bills.

Council Approval – Gift Certificates for staff and board/commission members

Mayor Davis asked that Council add an item to the agenda to approve gift certificates for distribution to the staff, Planning Commission, HDRC and Board of Zoning Appeals.

*Vice Mayor Kirk moved, seconded by Councilmember Snyder, that Council approve the giving of \$50 gift certificates to the staff, Planning Commission, HDRC and Board of Zoning Appeals.*

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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Discussion Items

Mayor Davis left the dais to avoid the appearance of a conflict of interest.

Status of Fun Shop request to vacate right-of-way

Town Planner Beniamino reminded Council that Page Allen of the Fun Shop has requested the vacation of a portion of the right-of-way located between the Allen properties at the Fun Shop. He further reminded them that when they last discussed this matter, Councilmember Patterson posed the question of how the Town acquired the right-of-way; and, whether it was able to be sold by the Town. Town Attorney Whiting advised Council that there were a couple of statutory procedures that applied to vacations. She reminded Council that a portion of this right-of-way was previously vacated to the Dimos Estate, as was a portion of Independence Avenue. Ms. Whiting advised that Chapter 20 of State Code Section 15.2 did not require an appraisal to set the price. She noted that she had no idea how the price was set in the past on the Dimos request. Ms. Whiting reminded Council that they had her negotiate the price for the Independence Avenue piece, with the Town ultimately electing to trade right-of-way for Marshall Street rather than accepting payment for the vacated property. She advised that she had no idea how the property

was valued earlier. Ms. Whiting explained that the State Code Statute stated that the property could be vacated based upon value, which could be established by an appraisal, contributory value or whatever the Council agreed upon. She advised that the statute was largely procedural; and, explained that the Council would need to hold a public hearing. Ms. Whiting noted that the Town could potentially receive competing offers; however, she reminded Council that both sides of the right-of-way were owned by the Fun Shop. She noted that the right-of-way was identified on the original plat of the Town; therefore, the right-of-way was created as an easement that the Town controlled overlying a heavily restrictive subdivision. Ms. Whiting advised that based upon case law, even if a record plat showed lot lines at the edge of the property, unless the Town was under the jurisdiction of a subdivision ordinance, the property would not have transferred fee simple to the Town. She further advised that under the existing statute if someone were subdividing property, any streets and sidewalks would transfer under fee simple ownership.

Vice Mayor Kirk asked what the next step would be in this request. Town Planner Beniamino advised Council that they could authorize the staff to acquire an appraisal of the property; and, could require the Allens to pay for it by including the cost in the purchase price. He noted that the Council could also require the Allens to secure the appraisal. Vice Mayor Kirk asked how this was handled in the past. Town Attorney Whiting advised that she had no idea how it was done. Councilmember Snyder expressed his opinion that the question was whether the Council wanted to pursue an appraisal. Councilmember Littleton expressed his opinion that the right-of-way did not have a lot of value. He suggested that securing an appraisal was the best approach.

Councilmember Shea asked whether the right-of-way could be used as an alley for deliveries in order to get trucks off the main street. Councilmember Snyder noted that this would create a road to nowhere. Councilmember Shea asked whether Southern States could use it for deliveries. Town Planner Beniamino reminded Council that once the driver pulled into the alley, he would have to back out onto the street, which VDOT would not allow. He noted that the Allens owned the surrounding property; therefore, the right-of-way was land-locked. Mr. Beniamino reiterated that VDOT would not allow vehicles to back out onto the street.

Councilmember Patterson asked about the width of the alley. She further asked whether it extended to Federal Street. Town Planner Beniamino confirmed it extended to Federal Street; however, he noted that he was unsure of the width. Councilmember Murdock noted that she was unsure that the right-of-way was worth being appraised; however, she noted the need for the Council to protect the Town. Councilmember Patterson suggested an appraisal was needed in order to avoid the appearance of a conflict of interest. Councilmember Snyder agreed this would keep the Mayor out of a conflict. Town Attorney Whiting advised Council that the right-of-way was forty feet in width.

Councilmember Murdock asked how the Town would bill for the appraisal. Town Planner Beniamino advised Council that the Town could hire an appraiser or they could give the Allens the opportunity to do so. Councilmember Snyder suggested it would be fair if the Town handled the appraisal. Councilmember Patterson asked the cost of an appraisal. Councilmember Snyder expressed his opinion that it would cost \$250-300. Councilmember Shea recommended that the cost be attached to the sales price. Vice Mayor Kirk expressed her opinion that the Council was in agreement that the Town would secure the appraisal and attach the cost to the price of the right-of-way.

Town Planner Beniamino reminded Council of the previous request that he find an appraiser in Loudoun County; and, advised that he could only find one. Councilmember Littleton noted that he recently secured an appraisal from a firm that did a lot of work in Middleburg. Town Planner Beniamino advised Council that he would check prices again; and, asked whether the Council wanted him to go with the cheapest quote. Councilmember Snyder advised Council that he

wanted the appraisal performed by someone who was familiar with the area. He noted that the firm used by Councilmember Littleton would carry weight with him since they have worked in Middleburg. Councilmember Littleton noted that Jack Connell also performed appraisals in Middleburg. Town Planner Beniamino advised Council that he would work with Councilmember Littleton to find an appraiser. Councilmember Shea asked whether a public hearing would be advertised once the appraisal was complete. Town Planner Beniamino advised Council that he would bring the appraisal and plat back to them. He noted that there was a chance the Allens may not want to purchase the right-of-way once it was appraised. Councilmember Shea asked whether the Town needed to advertise that it was willing to sell the right-of-way. Town Planner Beniamino confirmed it would. Councilmember Shea asked whether the Allens could be out bid by someone else. Town Planner Beniamino confirmed they could.

Mayor Davis resumed the chair of the meeting.

#### Request to make Farmers Market & Arts Council Committees official Town committees

Economic Development Coordinator Pearson explained that when working on the by-laws for the Farmers Market Committee, it was brought to their attention that if they fell under the umbrella of the Town as an advisory board they would not need by-laws. She noted that the by-laws that were being written were not appropriate for the Town. Ms. Pearson asked whether the Council would endorse the Farmer's Market Committee as an advisory board, as well as the Middleburg Arts Council. Councilmember Snyder asked about the reporting requirements associated with an advisory board to the Council. Town Attorney Whiting reminded Council that efforts were started a couple of years ago to create a charter for each of its advisory boards and to address what authority was delegated to them. She noted that the Town was attempting to determine whether they were advisory or were delegated with the responsibility of making decisions. Ms. Whiting advised that it has been years since this was reviewed; and, suggested it was a good exercise. She reminded Council that the original exercise was prompted in part by the improvements to the Pink Box, in which goods and services were solicited with no one being in charge of the offers. Ms. Whiting further reminded Council that the Town put a structure in place that required Council approval before commitments could be made on behalf of the Town. She reiterated that it was a good exercise when the Town was taking on a new function. Councilmember Snyder advised that he wanted to understand the ramifications of what would occur if the Town were to take the committees on; and, explained that he did not want to subject them to un-natural restrictions for those functions, such as the open meeting requirements. Economic Development Coordinator Pearson explained that the enacting resolution would identify what the Town wanted to control, such as the number of members and what they would need to report upon. She expressed her opinion that the issues could be controlled through the resolution. Councilmember Snyder asked about the State's requirements under which they would fall. Town Administrator Schiro confirmed that the Town could not get around the open meeting requirements. Councilmember Snyder asked whether the committees were aware of this; and, whether they were willing to under-take those requirements. Town Planner Beniamino noted that the Streetscape Committee was more informal. Town Administrator Schiro advised Council that there was some potential liability exposure for the Town for the Farmer's Market. He noted that he was not sure what the Arts Council was proposing; however, if these organizations were organizing Town functions under the Town's liability umbrella, there was potential exposure and liability. Councilmember Shea asked what official Town committees existed. Town Clerk North noted that the Council did not appoint members to the Go Green or Streetscape Committees. She confirmed that the Council officially appointed the Planning Commission, HDRC, Health Center Advisory Board, Board of Zoning Appeals and Pink Box Advisory Board. Councilmember Snyder reiterated that he did not want the Farmer's Market to rely on the Council for its membership. Councilmember Shea suggested the Council could define the board by resolution. Councilmember Snyder noted that he did not want to create an animal that had no right to exist.

Councilmember Shea asked whether the staff was seeking approval during this meeting. She suggested that it would be helpful if the staff were to outline what they wanted in the resolution. Economic Development Coordinator Pearson explained that if the Council agreed, the staff would come back next month with a resolution for their consideration. Vice Mayor Kirk agreed this was a good idea. Councilmember Snyder agreed; and, suggested that all of the issues be raised with the committees so they understood what was involved in being an advisory board. Councilmember Shea asked whether the Town Attorney should look at the liability issues associated with the Farmer's Market. Councilmembers Murdock and Plescow agreed she should. Town Attorney Whiting noted that she already received similar questions when the Council displaced the original county entity that operated it. She suggested that since the market involved commerce, a review was prudent.

### Information Items

Councilmember Shea reported that Books and Crannies would have an author in town this weekend, who would be painting in the courtyard. She noted that Ms. Ford has e-mailed residents regarding this event; and, was receiving responses.

Councilmember Patterson announced that the sign-up sheet for volunteers to man the Salvation Army kettle was available at Crème de la Crème. She noted that the volunteers were needed starting Thanksgiving; and, advised that the Salvation Army would have a credit card machine available this year. Ms. Patterson reminded Council that they were hoping to get as many volunteers as possible.

Councilmember Patterson announced that The Hill School's 8<sup>th</sup> grade play, entitled "Willie Wonka" would be held next weekend. She noted that it was free to the public.

Mayor Davis noted that INOVA Hospital had a new urgent care unit in Purcellville; and, advised that she recently attended the ribbon cutting ceremony. She expressed her opinion that it was a beautiful facility. Ms. Davis encouraged residents to attend the Open House on November 14<sup>th</sup>; and, noted that there would be a lot of activities for children.

Mayor Davis announced that the Piedmont Community Foundation would hold an Open House on November 18<sup>th</sup> at the Middleburg Community Center to celebrate their ten year anniversary. She noted that everyone was invited to attend.

Mayor Davis urged residents to shop locally; and, noted that out of every \$1 spent at a local business, \$.70 stayed in town. She further noted that this amount was less for out-of-town businesses; and, \$0 for internet shopping. Ms. Davis reminded the public that town businesses were hurting; and, noted that some were closing. She suggested the need to take this matter seriously; and, expressed her opinion that if the public did not start doing extra business, the town may lose the businesses. Ms. Davis noted that some people believed Middleburg's businesses were more expensive; and, advised that some were, while others were not. She reiterated that the residents needed to think more about supporting and doing business in Middleburg in order to make the town stronger. Councilmember Littleton expressed his opinion that every little bit helped; and, suggested that some stores may not be in business in January. He advised that he and his wife have made it a policy to shop as much as possible in town. Mayor Davis expressed her opinion that they should also dine locally. She reiterated that this was important as the town was seeing stores close. Ms. Davis noted that all of them were struggling; and, strongly urged people to shop locally for the sake of the community. Councilmember Snyder noted that he enjoyed seeing people in town when he was dining out.

Councilmember Murdock announced that a new shop (Artrageous) had opened above a Cup of Giddy Up. She explained that the owner was concerned about the empty commercial space in town so she decided to rent a space that would be used as a coop for local artists to sell their works. Ms. Murdock expressed her opinion that it was a great thing for this individual to do; and, noted that it tied into the Middleburg Arts Council work. Councilmember Patterson advised Council that another new business was coming to Town; and, noted that there were some coming into the area.

Economic Development Coordinator Pearson announced that the last Farmer's Market of the season would be held on November 14<sup>th</sup>. She reported that a photograph of the Christmas in Middleburg event was on the front cover of the *Horse of Delaware Valley Magazine*. Councilmember Snyder asked what would be at the Farmer's Market. Economic Development Coordinator Pearson confirmed there would be apples, pears and other fruit, as well as root vegetables. She noted that there were still some vegetables available that have been in cold storage; and, advised that they still had a good selection.

**Closed Session** – Appointment to Boards/Commissions

*Vice Mayor Kirk moved, seconded by Councilmember Shea, that Council go into closed session as allowed under the Virginia Freedom of Information Act Section 2.2-3711(A)(1) pertaining to the discussion, consideration or interviews of prospective candidates for employment, assignment, appointment, promotion, performance, demotion, salaries, disciplining or resignation of specific public officers, appointees or employees of the public body. Vice Mayor Kirk further moved, seconded by Councilmember Shea, that this discussion be limited to an appointment to the Bull Run Alcohol Safety Action Program. Vice Mayor Kirk further moved, seconded by Councilmember Shea, that the Council thereafter reconvene in open session for action as appropriate.*

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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Mayor Davis asked that Council 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. Each member of Council present did so certify.

There being no further business, a motion was made to adjourn the meeting at 7:47 p.m.

APPROVED:

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Betsy A. Davis, MAYOR

ATTEST:

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Rhonda S. North, MMC, Town Clerk