



MIDDLEBURG TOWN COUNCIL
Regular Monthly Meeting Minutes
Thursday, November 18, 2010



PRESENT: Mayor Betsy A. Davis
Vice Mayor C. Darlene Kirk
Councilmember Kevin Hazard
Councilmember Catherine “Bundles” Murdock
Councilmember Kathy Jo Shea
Councilmember Mark T. Snyder
Councilmember David B. Stewart

STAFF: Martha Mason Semmes, 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
Debbie J. Wheeler, Town Treasurer

ABSENT: Councilmember Trowbridge Littleton

The Town Council of the Town of Middleburg, Virginia held their regular monthly meeting, beginning at 6:00 p.m. on Thursday, November 18, 2010 in the Town Hall Council Chambers, located at 10 W. Marshall Street. Mayor Davis led Council and those attending in the Pledge of Allegiance to the flag.

Mayor Davis introduced Martha Mason Semmes, the new Town Administrator. She advised that the Council was thrilled to have her back; and, noted that she served as the Town Planner from 1995 to 2001. Ms. Davis reported that Ms. Semmes has served with Loudoun County’s Economic Development Department and as the Town Planner for Purcellville. She expressed her opinion that she was talented and well liked by everyone; and, that she brought a wealth of knowledge to the position.

Public Hearing – Zoning Ordinance Amendment 10-01: Revisions to Town Code related to the Historic District Review Committee

No one spoke and the public hearing was closed.

Action Items related to Public Hearing –

Council Approval – Zoning Ordinance Amendment 10-01: Revisions to Town Code related to the Historic District Review Committee

Town Clerk North reminded Council that the Historic District Review Committee (HDRC) has recently experienced problems achieving a quorum. She explained that the proposed amendments would change the quorum requirement from the Chairman plus four voting members to simply four voting members. Ms. North further explained that the amendments would clarify that the Vice Chairman assumed the Chairman’s role in his absence; and, noted that the Town Code was currently silent in this regard. She advised that the ordinance would also make the Chairman a voting member of the Committee in the event that his presence was needed to achieve a quorum.

Councilmember Murdock moved, seconded by Councilmember Snyder, that Council adopt Zoning Text Amendment 10-01 amending Part V related to the Historic District Review Committee.

Vote: Yes – Councilmembers Kirk, Hazard, Murdock, Shea, Snyder and Stewart

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

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

Special Recognitions by Mayor and Council

Presentation of plaque to Middleburg Beautification Committee & Streetscape Committee – APA Great Streets in America Award

Town Planner Beniamino presented Punkin Lee, President of the Middleburg Beautification Committee and a member of the Streetscape Committee, with a copy of the plaque the Town received from the American Planning Association in recognition of Washington Street’s being named one of the Ten Great Streets in America for 2010. He noted that these committees reviewed and made recommendations on landscaping plans that were proposed in the town, as well as implementing beautification projects. Ms. Lee thanked the Town; and, noted that it took the work of all of the volunteers and committees to make things happen. Mayor Davis thanked Ms. Lee for her work; and, extended the Town’s appreciation to all of the committee members.

Public Presentations –

Update on Middleburg Library

Dennis Cotter and Jeff Baldwin, of the Middleburg Library Advisory Board, appeared before Council to report on the plans to expand the community library. Mr. Cotter explained that earlier this year, the Advisory Board developed a strategic plan for both the Board and the library. He further explained that the plan was based upon the strategic plan of the Loudoun County Library System as a whole.

Mr. Cotter advised Council that the Middleburg Library’s mission was to be the community information center for the area. He noted that they have assessed their current situation; and, determined that the area served by the Middleburg Library was large and rural. Mr. Cotter reported that the library was currently at full capacity. He noted the financial challenges of expanding the library due to the County’s budget pressures.

Mr. Baldwin advised Council that the Advisory Board had identified five objectives that they hoped to achieve over the next four or five years. He explained that they included: providing an appealing community space; providing a wealth of resources for their users; providing a dynamic learning environment; maintaining the service capacity as the “community information center”; and, maintaining an effective linkage with the community. Mr. Baldwin noted that the library’s users frequently accessed their wireless connection to the Internet, both from the library and while sitting in their cars.

Mr. Baldwin expressed his opinion that in order to accomplish the Board’s objectives, the library needed more space. He noted that the Middleburg Library was the only library in the County that did not have a meeting room; and, was the smallest in the County. Mr. Baldwin advised that the library hosted a number of events; and, noted that there was no space when they occurred. He reiterated that the community’s use of access to the Internet was phenomenal.

Mr. Baldwin advised that the Advisory Board's plan was to expand the library on its existing lot. He reminded Council that the land was owned by the Community Center. Mr. Baldwin reported that the library was sited and designed to be twice as large as it currently was. He noted that Middleburg's library was built through the same funding source that funded the Lovettsville Library, which was the same design and was also built to only half its design size. Mr. Baldwin advised Council that in 1999, Lovettsville set about to expand their library; and, noted that it took six years to accomplish. He explained that Middleburg's plan was to replicate what Lovettsville did as the two facilities were essentially the same, just with different roof lines. Mr. Baldwin explained that the Lovettsville Library was originally built in less than 2,000 square feet; and, was expanded to 4,000. He noted that the Middleburg Library was thirty-five feet deep from front to back; and, advised that they planned to expand it back another thirty-five feet as Lovettsville did. Mr. Baldwin reported that the land was available as it was part of the original site.

Mr. Baldwin presented photographs of the interior of the Middleburg Library, as well as Lovettsville's. He noted that Lovettsville now had three times the resources for browsing; and was a better facility. Mr. Baldwin advised that they installed four Internet stations in their expanded facilities. He noted that even though Lovettsville was told not to do so, the Internet stations were constructed in the main path of the library; and, suggested that Middleburg would learn from their mistake. Mr. Baldwin reported that the Lovettsville Library had a story room that held sixty people, that was also used for functions, as well as a children's nook.

Mr. Baldwin advised Council that the Advisory Board expected that it would have to raise the capital for this expansion project as it would not be a line item in the County's Capital Improvement Program "in his lifetime". He reported that Lovettsville spent \$700,000 for their 2,000 square foot addition; and, noted that a lot of this was for engineering and site work. Mr. Baldwin advised that the major portion of the site work for the Middleburg Library expansion was done; therefore, he was confident the project could be completed for significantly less. He advised, however, that it would still be expensive. Mr. Baldwin explained that the plan was that the Advisory Board would raise the funds for the project.

Mr. Cotter advised Council that a number of meetings have been held regarding this project, including a meeting with Supervisor Jim Burton, who was very supportive. He noted that Supervisor Burton did raise some legal issues since the building was owned by the County on land leased from the Community Center. Mr. Cotter advised that the Advisory Board's intent was to contract for the expansion project themselves, outside of the County process, which they believed would allow the project to be done faster and cheaper. He noted the need for a Memorandum of Understanding with the County. Mr. Cotter reported that the Advisory Board also met with the Community Center's Board of Directors; and, noted that they were also very supportive of the project. He advised that the Board also met with the County Library System's Board of Trustees, with the meeting being held in the Middleburg Library so the Trustees could see the size for themselves. Mr. Cotter noted that the library had to borrow tables just to accommodate the meeting. He expressed his opinion that the expansion project had the support of those involved; however, he noted that it would be difficult given the number of boards that would be involved.

Mr. Cotter noted that the building was located in the town; and, advised that the Advisory Board was aware that they must comply with the Town's ordinances. He explained that the project was in the very initial stages. Mr. Cotter advised that as the result of the Advisory Board's 501(C)(3) status, they have raised money to buy items. He noted that, for a long time, they wanted to buy the adjacent parcel to expand; however, they have finally given up on that idea. Mr. Cotter reiterated that they had the space to expand on the existing site. He advised that their time frame for the project was two years on the outside. Mr. Cotter reiterated that the Board had raised money over the years; therefore, they already had a certain amount that they could spend on the project. He expressed hope for the Town's support.

Mayor Davis expressed her opinion that the Advisory Board would have the full support of the Council; and, noted that they cherished the library. She expressed the Town's appreciation for the Advisory Board. Ms. Davis noted the work that has taken place over the past several years just to keep the library open.

Mr. Cotter noted that at one time both Middleburg and Sterling's libraries were proposed for closure. He reminded Council of the campaign to keep them open.

Mayor Davis reiterated the Council's appreciation for the library; and, advised that they would do what they could to assist. She thanked Messrs. Cotter and Baldwin for their presentation. Ms. Davis noted that the Council was aware of the small size of the library. Councilmember Snyder noted that it was better than the old book mobile that existed many years ago.

Mr. Cotter reported that the County Library Administration's priority was to first open the Gum Springs Library in Aldie. He noted that this would be a 40,000 square foot facility that would be sixteen times the size of Middleburg's library. Mr. Cotter reported that their next priority was to build a library in Brambleton; and, the third was to renovate the Cascades Library, which was built fifteen years ago.

Councilmember Murdock asked whether Middleburg would get any County funds. Mr. Cotter explained that capital funding was based upon population triggers. He noted that Middleburg was on the County's capital plan ten years ago; however, it slowly moved lower and eventually fell off the list. Mayor Davis suggested that Middleburg would never be on the list if it was based on population.

Councilmember Murdock reminded Council that last year when there was talk of the library's closure, the Town discovered that if it closed, the Community Center would get the building. Mr. Cotter noted that this was the library's saving grace. He advised Council that the Library Administration had forgotten about that detail; and, changed their mind about the closure once they knew it would not save them any money and that they would lose an asset. Councilmember Murdock expressed her opinion that this was a help. She suggested that if an addition was built onto the library, it would be there for years.

Mr. Cotter reminded Council that the County had a ninety-nine year lease with the Community Center for \$1. Councilmember Hazard asked how far the library was into the lease. Mr. Cotter reported that the lease started in 1977.

Mayor Davis requested that the Advisory Board keep the Council informed if there was anything they could do to help.

Rick Stoutamyer, of the National Sporting Library, reported that they had some shelving that could be used by the Middleburg Library. Mr. Cotter noted that they would love to have it when they had a building to put it in.

Approval of Minutes

Councilmember Snyder moved, seconded by Councilmember Murdock, that Council approve the October 14, 2010 Regular Meeting and October 28, 2010 Work Session Meeting Minutes as amended.

Vote: Yes – Councilmembers Kirk, Hazard, Murdock, Shea, Snyder and Stewart

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

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

Staff Reports

Town Administrator Semmes reported that the staff had hoped to have some interest expressed in the Town's snow removal contract; however, the Street Superintendent was still trying to get contractors to offer submissions. She noted that he had contacted some potential contractors; and, advised that Councilmember Littleton has suggested someone with whom the staff was following up. Ms. Semmes reminded Council that the contract would only be used in instances where the Town experienced more than six inches of snow. She noted that the staff had received indications that some of the contractors that have helped in the past in emergencies would be willing to help again; however, they would not contract to do so. Ms. Semmes expressed her opinion that it would be nice to have a contract with someone.

Town Administrator Semmes noted that a meeting was held on November 5 regarding an update on the new wastewater treatment plant. She reported that the Town Attorney was working on a letter that would be sent to Salamander by the end of the week on the status of the plant and the items that needed to be corrected prior to the Town's acceptance of it.

Town Administrator Semmes advised Council that she has placed a report from Davenport on their desks summarizing the savings that occurred as the result of the bond refunding. She reported that the refunding was not as successful as Davenport had hoped; and, explained that there was a great demand to sell bonds, including California who was offering \$14 billion in bonds that same week. Ms. Semmes noted that the Town did get above the minimum required savings of 3%; and, achieved a 3.5% net savings. She explained that this, unfortunately, did not allow the Town to front the savings as much as had been hoped. Ms. Semmes reported that she was meeting with officials from Middleburg Bank this week to talk about the portion of the bond that was not refunded. She explained that the Town was only able to refund \$2 million worth of bonds; and, noted that it had another \$900,000 with Middleburg Bank. Ms. Semmes advised that she would see if she could improve the conditions of that money. She noted that once the numbers were available, she could look at the Town's status for the mid-year budget review.

Town Administrator Semmes reported that the staff was working to repair and paint the Health Center.

Town Administrator Semmes advised Council that Chet Hughey was seeking a refund of a portion of the availability fees that he paid for the Chinn's Crossing Project in 2008. She noted that the meters were not set until this year. Ms. Semmes reported that there was a lot of information associated with this request that she was piecing together. She noted that she also wanted to get some advice from the Town Attorney. Ms. Semmes reported that this information would be available for the next Council meeting.

Town Administrator Semmes reported that she received a nice welcome during the Middleburg Business and Professional Association Mixer on November 9th. She advised that at that time, she was given a clipboard to sign up volunteers to ring the Salvation Army bell at the Safeway on December 6th. Ms. Semmes reported that the sign-up sheet was available on the Town Office counter if anyone wanted to volunteer. Councilmember Shea noted that the bell ringing was broken up by days, with businesses being asked to take a day. Town Administrator Semmes expressed her opinion that there were volunteers who were available to fill in if the Town could not get enough people to sign up.

Town Administrator Semmes noted that when she worked for Middleburg years ago, the staff would go to the B&A Grocery to get a ham or turkey. She advised that over the past couple of years, the Council has given \$50 gift certificates to the staff and \$25 gift certificates to the members of the Town's boards/commissions. Ms. Semmes asked whether the Council would like to do so again this year. She noted that an answer was needed as the staff needed time to gather the list of businesses that would participate in the program. Council agreed it wanted to offer the gift certificates again this year.

Councilmember Snyder advised Council that he made notes on the Salamander meeting that was held on November 5th. He offered to review them during the discussion item if Council was interested.

Councilmember Murdock asked Ms. Semmes how her first week went in Middleburg. Town Administrator Semmes advised that everyone was welcoming, including the staff. She noted that she previously worked with the Town Attorney and Police Chief.

Councilmember Murdock asked whether the position involved as much or more work than Ms. Semmes thought it would. Town Administrator Semmes expressed her opinion that the position felt good; and, noted that she was not bored. She reported that there was always someone who could help her. Ms. Semmes expressed her opinion that she was learning quickly. She noted that Rob Lohr from Purcellville kept a daily matrix of what he did so he could remember it; and, advised that she was doing the same. Ms. Semmes reported that she would be happy to share this with Council; and, noted that it involved a variety of issues.

Town Administrator Semmes noted that she attended the premier of Dr. Sheila Johnson's film last night; and, expressed her opinion that it was "amazing". Ms. Semmes reported that it would be shown on Showtime on December 1.

Councilmember Murdock noted that the Police report indicated that there were a lot of drunks this past month. Chief Webber confirmed that they encountered a few.

Councilmember Shea asked whether the Police Department was aware of the burglaries that have taken place in Warrenton. She noted that there have been eight known ones in the last few weeks, mostly in businesses. Councilmember Snyder suggested that Chief Webber contact Warrenton for a report. Mayor Davis asked whether the burglaries were occurring at night. Councilmember Shea confirmed that they seemed to be.

Town Planner Beniamino reported that Council received a letter from Liz Thomas, who lived across the street from the new water treatment plant. He reminded them that the Streetscape Committee previously agreed to help with extra screening. Mr. Beniamino advised that the area in which Ms. Thomas wanted the extra plantings to occur was on land that was a separate parcel from the Salamander property and was separate from the treatment plant property. He explained that this parcel was also owned by Salamander; and, noted that it was an unusual triangular shaped parcel. Mr. Beniamino expressed an understanding of Ms. Thomas' position; however, he explained that because the screening was required by the zoning ordinance to occur on the water treatment plant site, the Town could not require more of Salamander. He suggested it was more of an issue of approaching Salamander. Mr. Beniamino reminded Council that Prem Devadas, of Salamander Hospitality, was privy to a Council discussion that occurred in March regarding this matter; and, noted that he agreed to look into it. He expressed his opinion that there has been no movement. Mr. Beniamino suggested that if Council determined it to be appropriate, they ask the Town Administrator to approach Mr. Devadas.

Councilmember Murdock asked whether Ms. Thomas understood that the planting location she requested was on a different property. She noted that by the time the Town received permission to plant trees this year, it would be too late. Ms. Lee, of the Streetscape Committee, confirmed that any plantings would have to occur in the spring. She reminded Council that the Committee found some trees that could be used for the project at a Christmas tree farm.

Town Planner Beniamino reminded Council that the assumption was that the Town would take control of the plant this past summer; however, it was still under Salamander's control. He noted that when the Council originally looked at where the large plantings were to occur, it was at the bottom of the hill on property the Town would own. Mr. Beniamino advised that even if Mr. Devadas agreed to the plantings at the location requested by Ms. Thomas, the Town would need an easement to ensure the trees would not be removed by the property owner in the future. He noted that Ms. Thomas' point was that if the trees were planted at the bottom of the hill, it would take many years for them to grow to the height needed for a proper screen.

Councilmember Murdock asked what the Council should do. Town Planner Beniamino suggested they direct the Town Administrator to approach Salamander to see how they felt about doing this. Councilmember Snyder agreed in terms of needing an easement, as the Town could do the planting.

Councilmember Murdock expressed her opinion that the plantings would benefit the area homeowners and would increase real estate values. She suggested the need to do anything to make things better.

Town Administrator Semmes expressed her opinion that there was not much that could be done with this sliver of property. Vice Mayor Kirk noted that technically a house could be built on the site. Town Planner Beniamino noted that Salamander would have to spend a lot of money to grade and clear the property. Town Administrator Semmes noted that any building would occur further to the west. Town Planner Beniamino reminded Council that the area was well screened during the summer. He noted that the problem was during the winter when the trees lost their leaves.

Vice Mayor Kirk noted that she had been asked about the orange fence. Town Planner Beniamino explained that this was a County soil and erosion control requirement. Town Administrator Semmes noted that it would eventually go away.

Town Administrator Semmes reported that the staff did find out that there were some things associated with the plant that needed to be completed. She explained that while on the property, she noticed that there was landscaping that had not been planted but rather was sitting in pots and dying. Vice Mayor Kirk suggested the staff mention this to Mr. Devadas. Town Planner Beniamino reminded Council that this landscaping was not purchased using Town money, but rather was purchased by Salamander. Mayor Davis suggested that Salamander may want to check with the landscaper.

Town Planner Beniamino advised Council that he worked on a project in Hamilton with ESRI that involved the mapping of fire hydrants using GPS and an Apple I-Phone. He further advised that they also did a project in Middleburg, with Loudoun Water and the County's GIS Department mapping the hydrants in town. Mr. Beniamino noted that he planned to present this project to the Planning Commission to show them how these instruments could be used for developing a pedestrian connection plan. He advised Council that while the Tremble units measured the infrastructure very closely, the Town did not need that level of accuracy for some of its projects. Mr. Beniamino reported that the I-Pad and I-Phone provided good meter accuracy. He suggested the Town could do a lot more with GIS in the coming years; and, could do so with equipment that was already available. Town Administrator Semmes noted that the Town Planner was pursuing this as a project. Town Planner Beniamino expressed his opinion that Middleburg would be a tester of the new applications/software.

Councilmember Shea noted that in looking at the monthly financial report, the General Fund revenue appeared to be at 14%; and, asked whether there were factors that explained it. Town Treasurer Wheeler reported that the Town received a great deal of money in November through the sale of decals and the collection of taxes.

Councilmember Shea noted that the Planning/Zoning and Economic Development expenditures for workman's compensation costs were over 200% of their budget. She suggested this needed to be addressed when the Council considered the coming budget. Councilmember Snyder noted that it would be handled as a budget adjustment.

Reports of Town Committees

Vice Mayor Kirk suggested that Council destroy their copies of the Town Administrator applications. Councilmember Murdock asked how this could be done. Vice Mayor Kirk reported that she brought her copies into the Town office and used the shredder. Councilmember Shea reported that she had a large shredder; and, offered to shred the documents for Council.

Action Items (non-public hearing related) –

Council Approval – Site Plan Waiver – Second Chapter Books, LLC – 8 East Federal Street

Councilmember Shea recused herself and left the dais.

Town Planner Beniamino advised Council that this was a request for a site plan waiver from Second Chapter Books, LLC for a book store to be located at 8 East Federal Street. He noted that the Council has done several such waivers over the past couple of months. Mr. Beniamino advised Council that this property was located in the C-2 District, which did not require parking for changes of uses for existing buildings used for retail, restaurant or personal services. He noted that this change would be from office to retail use. Mr. Beniamino recommended approval of the request as it met the Town Code criteria.

Councilmember Murdock asked where the property was located. Town Planner Beniamino explained that it was the house with the patio to the left of Geri Chittick's building. Jilann Brunett, one of the applicants, confirmed that it was located between the flower shop and the Back Street Cafe.

Councilmember Murdock asked whether this was the same type of waiver as was granted for the hairdresser. Town Planner Beniamino confirmed it was. He noted that the difference was that the hairdresser was located in the C-3 District, which required parking; however, he noted that the property had the required parking.

Councilmember Snyder moved, seconded by Vice Mayor Kirk, that Council approve a request from Second Chapter Books, LLC for a waiver, as allowed under Section 3.4 of the Subdivision Ordinance, to the requirement for a site plan associated with a change of use for the property located at 8 East Federal Street.

Councilmember Snyder recommended that the Planning Commission take up the issue of changing from office uses on the first floor to make it easier for it to change to retail or restaurant uses in the C-2 District. Town Planner Beniamino asked whether Councilmember Snyder was recommending that the waivers go before the Planning Commission as opposed to the Council. Councilmember Snyder explained that he was asking that the Commission study the ordinance for the C-2 District so that the Council would not have as many applications for site plan waivers when going from office to retail use. Mr. Snyder suggested that an administrative approval process be used unless an issue arose that needed to be addressed.

Town Planner Beniamino noted that this issue could be raised during the December Planning Commission meeting, unless the Council wanted to address it during their joint meeting in January. Councilmember Snyder advised that either would be acceptable. Town Planner Beniamino suggested the issue be raised next week during the Planning Commission meeting. Councilmember Hazard agreed the Commission could start working on this change.

Councilmember Murdock asked whether the waiver request went before the Commission. Town Planner Beniamino confirmed it did not; and, noted that it was not required.

Town Attorney Whiting expressed her opinion that there were already some provisions in the Town Code that granted the Zoning Administrator the authority to waive some submissions in terms of studies and plans. She suggested that if these provisions did not exist, she could give Middleburg some language from Lovettsville's ordinance. Ms. Whiting expressed her opinion that the Planning Commission could identify criteria that, if met by the applicant, would allow for an administrative approval. Town Planner Beniamino noted that this was part of the larger Council discussion with the Planning Commission. Councilmember Snyder noted that his request was specifically related to office uses going to retail/restaurant uses.

Vote: Yes – Councilmembers Kirk, Hazard, Murdock, Snyder and Stewart

No – N/A

Abstain: Councilmember Shea

Absent: Councilmember Littleton

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

Councilmember Shea resumed her seat on the dais.

Council Approval – Temporary Zoning Permit – Christmas Sleigh

Town Planner Beniamino advised Council that this was a request for a temporary zoning permit from the Christmas Sleigh for the German Christmas Market Haus to be located in front of the Noble House. He reminded Council that this was last done in 2006. Mr. Beniamino explained that since that time, there have been changes in the ordinances, both from a zoning and tax perspective. Mr. Beniamino further reminded Council that the changes were mainly due to Market Salamander’s assembling a mobile food service delivery truck to service their construction site. He noted that prior to that, no regulations existed.

Town Planner Beniamino reported that Mr. Rausch submitted his application for a temporary zoning permit earlier this week; and, advised that the staff did a quick analysis. He noted that, as a result, several issues were raised, which he discussed with Mr. Rausch earlier in the day. Mr. Beniamino advised that, as a result, Mr. Rausch had written a second letter.

Town Planner Beniamino reported that from a zoning perspective, he was recommending approval of the request as, for the most part, it met the zoning ordinance criteria. He suggested that several conditions be attached to the approval, including the receipt of a zoning permit signed by the property owner; that the usable amount of floor area should not exceed four hundred square feet; and, that no more than two signs be associated with the structure. Mr. Beniamino noted that the building was greater than four hundred square feet; however, he believed it could be modified. He advised that even though it was not a staff recommendation, he did talk to the applicant about making sure that the Loudoun Health Department approved the permit for the food aspect of the business. Mr. Beniamino further advised that he has spoken with both Mr. Rausch and Police Chief Webber about the alcohol portion of the request; and, advised that this was an ABC issue. He noted that he asked Chief Webber what would happen if someone removed alcohol from the area; and, advised that the Chief would deal with it on a case-by-case basis as a violation of the ABC permit. Mr. Beniamino explained that it would be up to Mr. Rausch to ensure that those with alcohol stayed in the designated area.

Town Planner Beniamino advised Council that he also had a discussion with Mr. Rausch on the issue of taxes. He explained that after speaking with the Town Treasurer, he found that this business would fall in the category of being an Itinerant Vendor/Merchant, which required a \$500 annual permit fee. Mr. Beniamino noted that, under the zoning ordinance, temporary uses were allowed for a period of fifteen days unless extended by another fifteen days. He advised Council that Mr. Rausch was asking for the market for twenty-seven days; and, noted that he could only do it for thirty days within the calendar year.

Councilmember Hazard asked about the square footage of the structure. Town Planner Beniamino expressed his opinion that it was “pretty big”. Councilmember Hazard expressed his opinion that it was only forty-five square feet. He suggested the staff moved the decimal point. Town Planner Beniamino explained that he read the size as eighty-one feet, not eight. He confirmed the size would not be an issue.

Dieter Rausch, applicant, advised Council that he could not understand paying a business license fee of \$500 for twenty-seven days. He noted that in the past, this event was sponsored by his store; and, suggested it brought in thousands of dollars every year. Mr. Rausch advised Council that he drove to Baltimore to a German butcher to purchase the materials for the market. He reiterated that he has been told that the fee would be \$500 for the year; and, noted that he could not pay that. Mr. Rausch asked that Council divide the \$500 over twelve months or by days; and, advised that he could not put more money into permitting. He noted that he was not a vendor from Leesburg or “over the mountains”; and, reminded them that his business was in Middleburg. Mr. Rausch advised that he was doing this for his Christmas Sleigh customers. He noted that he had found a helper to assist him and “make the people happy”. Mr. Rausch advised that he had already paid \$800 for a radio spot advertising the market.

Mayor Davis asked whether this was a new tax that was adopted when the Town had other vendors. Town Attorney Whiting advised Council that the itinerant vendor provision has been in the business license ordinance since before she was the Town Attorney. Town Planner Beniamino advised Council that the Town recently changed how it classified temporary uses in the zoning ordinance. He expressed his opinion that Mr. Rausch was not charged a temporary business license fee in the past.

Councilmember Murdock reminded Council of the two men who sold ice cream this past year. Town Planner Beniamino advised Council that they encountered the same issue. He explained that when they learned that they had to pay a \$500 fee, they partnered with a church. Mr. Beniamino further explained that the Town Code allowed church event vendors to pay a \$10/day fee. He expressed his opinion that if Mr. Rausch’s temporary business had taken place on his property, the code may look at the business license differently; however, he suggested that since it was occurring on a separate parcel, it did not. Mr. Beniamino read the definition of an itinerant vendor from the Virginia Code; and, noted that a copy was on Council’s desk.

Councilmember Murdock noted that Mr. Rausch had a business and paid taxes. Councilmember Shea noted that she had the same question. Councilmember Murdock suggested it would be one thing to collect a fee from someone who was not subject to Town taxes.

Town Administrator Semmes noted that this was an issue in Purcellville. She explained that some vendors wanted to sell coffee/smoothies at the Farmer’s Market; and, advised that the vendor who did had a Town business license at another address. Ms. Semmes advised that she was not sure if Purcellville changed its code to allow for this; and, advised that she could find out. She noted, however, that this would not help with the request currently before Council. Ms. Semmes advised that the difference in that case was that the vendor was already in that business; and, was not doing a different one than he was already licensed for. She noted that in this case, the business was a retail one and the owner wanted to go into something that required the collection of meals taxes.

Town Planner Beniamino compared this request to Market Salamander’s. He noted that the question there was whether they were an itinerant vendor when they brought the food in on a vehicle. Mr. Beniamino advised that the difference here was that the applicant was going from retail to a restaurant business. He noted that even though he had a business in town, there was nothing in the Town Code to differentiate between the two.

Town Attorney Whiting noted that the Virginia Taxation Department issued advisory opinions. She advised that it was her instinct to go to their website to see if the facts associated with this situation were close to those that have already been the subject of comment. Ms. Whiting agreed with the Town staff that it would be easier if the Christmas Sleigh already did food sales. She noted that she was not comfortable “flying by the seat of her pants”; and, advised that she would like the opportunity to see if the Virginia Taxation Department had already weighed in on this type of situation.

Vice Mayor Kirk asked when the market would start. Mr. Rausch advised Council that he planned to start constructing the building three days before the parade.

Town Planner Beniamino recommended the Council issue the approval for the temporary zoning permit. He noted that the zoning permit was not based upon the business license. Mr. Beniamino advised that the business license was an issue for the staff to address. He suggested that the Council could approve the zoning permit and let the Town Attorney research the question related to the temporary business license. Town Attorney Whiting confirmed the Council did not have the authority to waive its tax.

Councilmember Snyder agreed the Council would only be approving the temporary zoning permit. He noted that they would be neutral on the issue of the temporary business tax. Mr. Snyder suggested that if the staff determined that Mr. Rausch had to pay the fee, he would either have to pay it or give up on the idea of the market.

Councilmember Murdock advised Mr. Rausch that the temporary business tax was not something the Council had control over; therefore, it could not make a decision on that. Mayor Davis advised that she would like to see this; however, she noted that the Town must abide by the rules.

Councilmember Hazard asked whether the information provided to them was in the Town Code. Town Planner Beniamino confirmed it was from the State Code. Councilmember Hazard asked how the Town's ordinance read. Town Attorney Whiting explained that the Town Code incorporated the State Code by reference. Town Clerk North explained that the Town Code set the permit fee at \$500 per year and in parenthesis referenced the State Code section.

Councilmember Hazard noted that the State Code did not set the fee at \$500, but rather said that it shall not exceed \$500. Town Clerk North explained that the Town Code did set the fee at \$500.

Councilmember Hazard asked whether this was a fee or a tax. Town Attorney Whiting explained that it was the business and professional occupational license. She reiterated that the Town already had a flat fee for itinerant vendors of \$500 when she became the Town Attorney in 1990. Ms. Whiting noted that since that time, the General Assembly has re-written the BPOL enabling legislation so it was more uniform in terms of definitions and the capping of rates. She advised Council that even if the Town had a different definition of an itinerant vendor, under the State Code the Town must follow the State definition. Ms. Whiting explained that having a uniform system made it easier to research the rules, as everyone must live by the same ones. She noted that different localities may have different tax rates. Ms. Whiting expressed her opinion that this case was not new; and, suggested she could find some guidance on it.

Town Planner Beniamino explained to Mr. Rausch that while the Council could change the fee, it would have to do so as an ordinance amendment. He explained that this could not be done quickly; and, could take several months.

Mayor Davis suggested the Council consider whether it was willing to approve the temporary zoning permit. She noted that the staff could then research the fee issue. Town Attorney Whiting reported that she could have an answer on the license fee by next week.

Mayor Davis advised Mr. Rausch that the Council's hands were tied. Vice Mayor Kirk noted that Mr. Rausch was not charged a fee in the past. Councilmember Murdock expressed her opinion that the Town did not have a permit fee in the past. Town Clerk North advised Council that the fee has been in the Town Code for many years. She suggested that Mr. Rausch should have been charged a fee in the past; and, suggested it was probably an oversight that he was not.

Vice Mayor Kirk moved, seconded by Councilmember Murdock, that Council approve a request from the Christmas Sleigh for a Temporary Zoning Permit to allow for their Bratworst Haus at 2 West Washington Street as allowed under Town Code Section 122(V)(64)(b), contingent upon the following: (1) receipt of a signed zoning permit application submitted by the property owner and (2) that no more than two signs be associated with the structure.

Councilmember Shea asked that the meeting minutes reflect that the Council was only doing this because the applicant was already a vendor in town; and, that this was a temporary, seasonal event. Councilmember Snyder asked whether temporary business licenses were restricted to individuals who already had a business in town. Town Planner Beniamino confirmed they were not. He explained that the temporary zoning permit was not based on items that were seasonal, but rather was based upon the sale of food. Councilmember Shea explained that the timing was specifically based upon a seasonal event. Town Planner Beniamino explained that temporary zoning permits could be issued for the temporary sales of food, produce, Christmas trees and regional goods. He advised that he looked at this as a food request, not a seasonal one.

Councilmember Murdock cautioned Mr. Rausch with regard to the ABC requirements, which could be very difficult to achieve. She noted that when she operated a restaurant in The Plains that sold wine, she had to take an ABC course in Winchester. Ms. Murdock further noted that every time she sold alcohol, she had to have a permit on the site.

Mr. Rausch noted that he would probably forget this idea. He advised that a friend from Germany could not understand the ABC permit requirement; and, noted that the wine would be boiled. Councilmember Murdock explained that she only sold wine in her restaurant; however, she had to be licensed.

Vote: Yes – Councilmembers Kirk, Hazard, Murdock, Shea, Snyder and Stewart

No – N/A

Abstain: N/A

Absent: Councilmember Littleton

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

Discussion Items

Councilmember Snyder reiterated that he attended the November 5th utility meeting along with the Town's utility engineer, Town Administrator, Town Attorney and Jerry Schiro. He asked whether the Council had any questions related to the meeting or whether they wanted a summary of it. Councilmember Shea asked that Councilmember Snyder share any concerns that he thought the Council needed to know.

Councilmember Snyder reported that he asked the Town Administrator to check with Loudoun Water on the flushing schedule. He further reported that he also asked for information related to the process of what occurred after a line break. Mr. Snyder suggested the need to improve this process; and, noted that when the Town lost a six-inch water line on Maple Street, it caused sediment to occur in the lines in the Ridgeview Subdivision. He advised that the line burst and the water in the area did not clear for a week in terms of sediment and air in the line. Mr. Snyder noted that he did not know if the water meters measured air in the line as water; and, expressed hope that customers were not paying for water usage that was actually air. He asked about the process for flushing the lines in general and after a break; and, reiterated the need to improve it. Mr. Snyder expressed his opinion that it was unacceptable that it took a week for the system to recover after the Maple Street line break.

Councilmember Snyder reported that during the meeting, the participants discussed the Salamander Inn Project. He reminded Council that the inn would be served by a sixteen-inch main, along with a two-inch line for their HVAC system. Mr. Snyder advised that these systems would be turned on as soon as the Town took over ownership of the new water treatment plant. Councilmember Shea asked whether this had been agreed to already. Councilmember Snyder confirmed it was part of the existing plans.

Councilmember Snyder advised that in order to accept the new plant, the Town needed a plat of the lot; and, noted that the Town Attorney was working on it. Town Attorney Whiting reported that the subdivision of the property was complete.

Councilmember Snyder reported that the Town Administrator had a punch list of items that needed to be corrected at the new treatment plant.

Councilmember Hazard asked why the Inn needed a sixteen-inch water line. Councilmember Snyder suggested that there was room for error on the size. Mayor Davis and Vice Mayor Kirk asked that the staff double check it to make sure it was correct.

Councilmember Snyder reported that the new wastewater treatment plant and permitting process were also discussed during the meeting. He noted that the testing of the wastewater treatment plant would include the Chesapeake Bay Act limits of technology requirements to make sure the plant could meet those standards. Mr. Snyder reminded Council of the need to determine the plant's operating costs so the Town would know the cost to operate at that level. He suggested that once the Inn opened, if the Town could afford to do so, the Council may wish to discuss increasing the plant's operating standards to meet the Chesapeake Bay Act requirements. Mr. Snyder noted that the Council could discuss this when the possibility arose. He suggested that Council may not wish to pursue it; however, he suggested they should discuss it.

Councilmember Snyder noted that GE would monitor the plant for a one year period. He reported that he questioned the security. Mr. Snyder advised that they also discussed the plant's start date; and, noted that this date tripped when GE's monitoring period would start. He advised that as to the security issue, he questioned the risk of someone else operating the plant remotely if GE could do so. Mr. Snyder reported that there was discussion about a number of defects, which Bob Krallinger was highlighting. He noted the need for a SCADA manual for the monitoring system that would be used by Loudoun Water.

Councilmember Snyder reported that the group discussed unaccounted for water; and, the possibility of having Whitman Requardt conduct a study of the Town's water loss. He noted that Mr. Krallinger was preparing a cost estimate for such a study. Town Administrator Semmes reported that she had their proposal; and, suggested it be discussed as a part of the upcoming budget discussions.

Councilmember Snyder reported that the group talked about the lack of an alarm on the west end pump station. He noted that they also discussed the possibility of doing a preliminary study to design, build or move the station.

Councilmember Murdock asked whether the hydrant issue was discussed. Town Administrator Semmes advised Council that she talked about this with Charlie Triplett, of Loudoun Water, as well as about the system flushing schedule. She explained that once the new water treatment plant was on line, the Town would have more water capacity to use for flushing. Ms. Semmes advised that the Town has not had the water to do a regular flushing program in the past. She noted that Loudoun Water would like to flush the system more regularly.

Councilmember Snyder advised that, when the system was flushed, he wanted an estimate of the number of gallons of water consumed. He noted that the Town was being dunned during the audit for unbilled water. Mayor Davis suggested they use a portable meter to measure it.

Councilmember Murdock asked whether Mr. Triplett said anything about the cause of the water line break. Town Administrator Semmes reported that after thinking more, Mr. Triplett could not say the water line break was related to the use of a fire hydrant. She advised that there was not enough evidence to pursue a possible coincidence between the use of water for fire training and the water line break.

Councilmember Murdock asked whether anyone checked to see if the Arcola Fire Department used the Town's fire hydrants to fill their tanks. Town Administrator Semmes reported that Mr. Triplett indicated that the pipe was old. Councilmember Murdock asked that the staff find out if the Arcola Fire Department filled their tankers with Middleburg's water during the volunteer training. She noted that signage on the site indicated that this was an Arcola training program. Councilmember Snyder noted that, if this occurred, he did not like it at all. He reminded Council that the Town could not afford to be that generous. Councilmember Murdock expressed her opinion that it was not acceptable if this occurred. Councilmember Snyder expressed his opinion that Councilmember Murdock raised a good point as the Town could not afford the infrastructure and water loss. Councilmember Murdock expressed her opinion that the water line break occurred too close to the training drill. Councilmember Snyder suggested the need for rules for the Fire Department's use of the Town's water.

Town Administrator Semmes reminded Council that the Fire Department would use a cistern to fill the tankers once their new facility was complete. Town Planner Beniamino expressed his opinion that the Department may still need to use the Town's system. Councilmember Snyder suggested the staff determine the cost to increase the water flow at Well 1. He noted that it was too low at this point. Mr. Snyder noted that, while not potable without treatment, this would be a great source for the Fire Department so they would not have to tap into the treated water to fill their trucks. Town Administrator Semmes suggested the Town could check to see if the County would pay to increase the flow. Councilmember Murdock noted that the Department could use their cistern for training purposes. She agreed they would still need to use the Town's system for fires. Mayor Davis suggested the staff find out more information regarding this matter.

Town Attorney Whiting advised Council that the Town of Lovettsville found that a tanker from another locality was using their system to fill up and was then selling the water to landscapers.

Town Attorney Whiting advised Council that Leesburg has bid a two year requirement for a lot of its infrastructure improvement contracts. She expressed her opinion that they regularly did water line relining projects. Ms. Whiting suggested they may have a requirement for an xxx hour response time to line breaks. She noted that Middleburg did not have a contract for repairs; and, advised that it just called local people. Ms. Whiting suggested that a repair contract be formalized to get a guaranteed response. Vice Mayor Kirk agreed this may be a smart thing to do. Councilmember Hazard suggested a cost benefit analysis be performed.

Councilmember Murdock reminded Council that she had asked the former Town Administrator to have signs made that would alert citizens that the Town was doing a flushing.

Councilmember Hazard noted that he did a lot of work in the Washington, DC area; and, has contracted with a company that basically conducted a building analysis for water loss. He advised that this company has been able to cut the building's water bills in half. Mr. Hazard noted that he inquired as to whether this company did municipal work; and, found they were working with Fort Worth and Atlanta. He reminded Council that the Town had an unexplained 70% water loss; and, suggested that an analysis be conducted. Mr. Hazard noted that if the loss was the result of bad water meters, this company would install high quality meters under a shared savings program so there would be no upfront costs to the Town.

Councilmember Snyder questioned how the auditor calculated the water loss. He noted that the Town knew of the loss; however, he advised that he was not sure he understood how it was calculated.

Councilmember Hazard advised Council that the company he worked with has done this type of work all over the United States. Vice Mayor Kirk suggested they were worth talking to. Councilmember Hazard advised that ten years ago, this company installed meters with a remote reading system in the Washington, DC area. He noted that the residents' water bills went through the roof, with the government then making a lot of money. Mr. Hazard suggested this was something worth exploring. Town Attorney Whiting advised Council that she would like to be in on that meeting, as she had questions related to her own water bill.

Councilmember Shea noted that the Town Administrator indicated that once the new water treatment plant was on line, there would be enough water to flush the system. She further noted that Salamander was installing a sixteen-inch water line to serve their facility. Ms. Shea asked whether there would be enough water for both. Town Administrator Semmes confirmed there would. Councilmember Snyder reminded Council that the Town would also be taking over two wells on the Salamander property, with the production of those wells feeding the new treatment plant.

Town Administrator Semmes advised Council that the issues were not all related to capacity. She noted that some of the Town's issues had to do with water pressure and the quality of the water. Ms. Semmes reminded Council that Salamander wanted to make sure that it was only getting water from their site. She noted that there would also be a fire line that would come off the sixteen-inch line. Ms. Semmes advised that Salamander would be on a long dead end line; therefore, they would experience some pressure loss. She noted that the line would also have to serve their three-story building.

Town Attorney Whiting reminded Council that the other potable well was located across Salamander's property.

Town Administrator Semmes advised Council that she had a punch list for the new plant, which would be added to the letter that would be sent to Salamander. Councilmember Snyder noted that the group agreed that it wanted a punch list from the plant's operators. Town Administrator Semmes advised Council that Salamander was working on some of the issues; however, they have not been fixed. She advised that a couple of items were serious enough that the Town could not accept the plant. Councilmember Snyder noted that one such example was two tanks that should operate under a gravity system but did not due to the way they were aligned.

Councilmember Hazard asked whether the plant was commissioned or whether the engineers were doing a punch list based upon existing plans. Councilmember Snyder advised that the Town's engineers told Salamander's engineers of several problems when reviewing the plans; however, they "blew it off".

Information Items

Councilmember Shea reported that she was working on the Council's goals; and, hoped to have them to the members in December.

Mayor Davis asked whether any applications were received for the HDRC position. Town Clerk North confirmed that no new applications were received. She noted that she was in the process of contacting those individuals who had submitted applications in the past to determine their interest. Ms. North advised that this would be an item for the December meeting agenda.

Vice Mayor Kirk announced that the Upperville Fire Department would hold an all-you-can-eat breakfast on December 5th. She noted that it was for a good cause.

Mayor Davis distributed a box of truffles that was received from Private Thaddeus Edwards, of the Shenandoah Valley Young Marines. She reminded Council that he appeared before them in October seeking the Red Ribbon Week Proclamation.

Mayor Davis advised Council that she spoke with Mary Jo Jackson, the President of the Middleburg Community Center, who was concerned about the information she read in the newspaper regarding the Dominion Power benefit project that was done at the Center. She explained that some of the facts were not right. Ms. Davis reported that the Dominion Project saved the Community Center between \$17,000 and \$20,000 as the result of the work they did. She noted that more than fifty volunteers from Dominion Power were present. Ms. Davis explained that Ms. Jackson was concerned that the project did not get the attention it deserved.

Mayor Davis announced that the Christmas in Middleburg Parade would be held on December 4th. She noted that the Hunt and Christmas Parades would be held together. Ms. Davis asked the members of Council to be at the parade line-up area at 10:30 to ride on the Mayor /Council float. She noted that the line-up was usually located on The Plains Road.

There being no further business, a motion was made to adjourn the meeting at 7:43 p.m.

APPROVED:

Betsy A. Davis, MAYOR

ATTEST:

Rhonda S. North, MMC, Town Clerk