

July 14, 2008 - Regular Town Council Meeting

At a Regular Meeting of the Town Council of the Town of Middletown, RI, held at the Middletown Town Hall on Monday, July 14, 2008 at 6:30 P.M.

Council President Paul M. Rodrigues, Presiding

Vice Chair Shirley R. Mello, Arrives at 6:35 P.M.

Councillor Barbara A. Barrow

Councillor M. Theresa Santos

Councillor Edward J. Silveira, Jr.

Councillor Robert J. Sylvia, Members Present

Councillor Louis P. DiPalma, Absent

EXECUTIVE SESSION

Pursuant to provisions of RIGL, Sections 42-46-2., 42-46-4 and 42-46-5 (a) (2) litigation.

On motion of Councillor Santos, duly seconded, it was voted unanimously to recess this meeting at 6:31 P.M. and reconvene in executive session.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to reconvene this meeting in open session at 7:05 P.M.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve the recommendation of Attorney Russell Jackson pertaining to a tax appeal case settlement, contingent upon acceptance of the Finance Director.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve the Town Solicitor to negotiate the SEP and penalty pertaining to the Wave Avenue Force Main.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to seal the minutes of the executive session pursuant to Section 42-46-7. RIGL.

ACTING AS A BOARD OF LICENSE COMMISSION

1. Application of WAMM, Inc. d/b/a Anthony's Seafood, Holder of a Retailer's Class BL Alcoholic Beverage License for premises located at 963 Aquidneck Avenue to expand the area of service of said license to include a 14 x 30 ft. area outside main entrance. (Requires Advertising for Public Hearing)

Councillor Silveira disqualified himself from acting on this matter due to possible conflict of interest, business related.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to advertise said license application for a public hearing to be held at the August 4, 2008 regular meeting of the board.

CONSENT CALENDAR

Vice Chair Mello requested that items #9 and #18 be heard under the rules of the Town Council portion of the docket.

1. Approval of Minutes – Special Meeting, May 20, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

2. Approval of Minutes – Special Meeting, May 28, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

3. Approval of Minutes – Special Meeting, May 29, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

4. Approval of Minutes – Special Meeting, June 2, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

5. Approval of Minutes – Regular Meeting, June 2, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

6. Approval of Minutes – Special Meeting, June 12, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

7. Approval of Minutes – Special Meeting, June 16, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

8. Approval of Minutes – Regular Meeting, June 16, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

9. Approval of Minutes – Special Meeting, June 17, 2008

Antone Viveiros, 110 Indian Hill Road, addressed the Council questioning the action taken by the Council concerning the Charter Amendment proposals submitted by him in May.

Council President Rodrigues, responding to Mr. Viveiros, noted that the only action taken upon his submission was to receive his Charter Amendment proposal.

On motion of Councillor Silviera, duly seconded, it was voted unanimously to amend the minutes indicating that Councillor Silviera voted yes to said motion, duly seconded, it was voted unanimously to make the change and approve the minutes, as amended.

10. Approval of Minutes – Special Meeting, June 30, 2008

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to approve said minutes.

11. Petition of William DiMarco and Barbara E. DiMarco, for perpetual care of burial lots in the Middletown Cemetery – Lots 78 and 79 in section 54.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive and approve said petition.

12. Application of Candigit Excavating Corporation, Swansea, MA, for RENEWAL of Drain Layer's License for the 2008-2009 licensing year.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license renewal.

13. Communication of Town Administrator, with enclosures, re: Tax Collector's report for period ending May 31, 2008.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication and report.

14. Communication of Town Administrator, with enclosures, re: Tax Collector's report for period ending June 30, 2008.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication and report.

15. Communication of Town Administrator, with enclosures, re: Financial Statements for period ending May 31, 2008.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication and financial statements.

16. Notice of Public Hearing received from Zoning Board of Review, Application of Victor Ruggeri, by his attorney Jeremiah C. Lynch, III, Esquire, for a variance from Sections 603, 701, 1301 (A) and 1301 (D) to construct 2- 40'x90' buildings, with a rear yard setback of 22.7', on real estate located at Vierra Terrace, TAP 113, Lot 105C.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said notice.

17. Communication of Amy M. Rose, Deputy Town Clerk, Town of Charlestown, with enclosures, re: Requesting support of the USS Saratoga Museum project.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

18. Communication of Charles A. Horbert, Permitting Supervisor, Office of Water Resources, Freshwater Wetlands Program, re: Insignificant Alteration- Permit for property and proposed projected located approximately 1760 feet west of Forest Avenue, within the existing Drainage and Utility easement associated with, and located west of “The Residences at Bay Ridge”, Assessor’s Plat 113, Lot 3.

Maggie Bulmer, 3 Wood Road, addressed the Council expressing concern with the Insignificant Alteration Permits issues by DEM for Town wetlands. Ms. Bulmer requests the Town to monitor the

permits issued by DEM for Middletown areas.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

19. Memorandum of Town Administrator, with enclosures, re: Report from the Planning Commission – Recent Advances in Regional Planning.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said memorandum and report.

20. Communication of Frederick C. Williamson, Chairman, State Historic Preservation Officer, re: National Register of Historic Places listing (Smith-Garner-Norman Farm Historic District aka Paradise Farm, 583 Third Beach Road).

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

21. Communication of Victoria Johnson, Chair, Golf Tournament, NAACP, re: Expressing appreciation for Town support.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

TOWN COUNCIL

1. Applications (5) for Special Events Permits received from the following named persons, firms or corporations:

a) The Clambake Club of Newport, Loeb's Birthday Party (Private), Fireworks display, Saturday, August 2, 2008 from 9:30 PM until 9:45

PM.

b) Newport Historical Society, Newport Antiques Show, St. George's Hockey Rink, Friday, August 8, 2008 from 5:00 PM until 9:00 PM, Saturday, August 9, 2008 from 10:00 AM to 6:00 PM and Sunday, August 10, 2008 from 10:00 AM until 5:00 PM.

c) Heather Curran, Birthday Party, Peabody's Beach, Saturday, August 16, 2008 from 5:00 PM until 11:00 PM.

d) Tuesday Night Athletic Foundation, One Mile Open Water Swim, Sachuest Point, Second Beach, Saturday, September 13, 2008 from 8:00 AM until 1:00 PM, alternate date Saturday, September 20, 2008 from 8:00 AM until 1:00 PM.

e) Amica Insurance/Breakers Marathon, 2008 Breakers Marathon and Marathon Relay, Middletown roads (see attached street list), Saturday, October 18, 2008 from 8:00 AM until 2:00 PM.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said permits.

2. Application of Best Buy Stores #1490, 890 West Main Road, for a Holiday License for the 2008-2009 licensing year. (NEW)

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to grant said license.

3. Public Hearing (Advertised)

An Amendment to the Town's Comprehensive Community Plan (Second Reading)

Amendment to Town's Comprehensive Community Plan implementing specific provisions of the West Side Master Plan.

Public Hearing was declared open.

Town Planner Ron Wolanski addressed the Council noting that the proposed amendments are all to the text of the Comprehensive Plan,

implementing the West Side Master Plan. The implementation of these amendments will ensure that future development is consistent with Town's wishes.

There being no other persons present desiring to be heard on this matter public hearing was declared closed.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to adopt said amendment on its second reading.

4. Public Hearing (Advertised)

An Ordinance of the Town of Middletown (First Reading)

An Ordinance in amendment to the Town Code of the town of Middletown, Chapter 152, Zoning Code, Article 6 – Application of District Regulations, Section 602, Schedule of District Regulations – Uses and Districts. (Two-family dwellings) (Planning Board recommendation attached)

Public Hearing was declared open.

Town Planner Ron Wolanski addressed the Council noting that the Planning Board does not recommend the proposed amendment to this section. Mr. Wolanski reviewed the history of this section of the Zoning Ordinance. He noted that currently, in Section 805 (Nonconforming Lot of Record), a phrase was added in 2006 which reads, “except that in the case of two-family dwelling development where the standards of Section 603 are not met, a special use permit shall be required”.

There being no other persons present desiring to be heard on this matter public hearing was declared closed.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said amendment on its first reading.

5. Communication of Town Administrator, with enclosures, re: Requesting Council to authorize approval of Dan Beardsley to represent Town concerning the REAP.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

6. Resolution of the Council, re: Authorizing Dan Beardsley to represent the Town concerning REAP.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

7. Communication of Town Administrator, with enclosures, re: Award of contract for 2008 Sewer Manhole Rehabilitation Project.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

The summary of bids – line item detail and memorandum from the Town Engineer referenced in the above communication are on file in the Office of the Town Clerk.

8. Resolution of the Council, re: Award of contract for 2008 Sewer Manhole Rehabilitation Project.

Council President Rodrigues requested a project schedule be listed on the Town's website for residents to view.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

9. Communication of Town Administrator, with enclosures, re: Award of contract for 2008 Sidewalk Project.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

The summary of bids – line item detail and memorandum from the Town Engineer referenced in the above communication are on file in the Office of the Town Clerk.

10. Resolution of the Council, re: Award of contract for 2008 Sidewalk Project.

Discussion centered around following the rules of the bid process, the bid process requiring five prior references and not granting the project to the low bidder.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

11. Communication of Town Administrator, with enclosures, re: Award of contract for 2008 Paving.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

The summary of bids – line item detail and memorandum from the Town Engineer referenced in the above communication are on file in the Office of the Town Clerk.

12. Resolution of the Council, re: Award of contract for 2008 Paving.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

13. Communication of Town Administrator, with enclosures, re: Award of contract for Public Library Exterior Building Repair.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

14. Resolution of the Council, re: Award of contract for Public Library Exterior Building Repair.

Library Director James Knowlton addressed the Council noting that this contract is to renovate the exterior of the Library. Mr. Knowlton explained that CeMat was not the lowest bidder however, the company was highly recommended.

Discussion centered around the warranty on the work, not issuing the contract to the low bidder and having the Town Engineer review the bids for the project.

Vice Chair Mello moved, and it was duly seconded, to pass said resolution.

Vice Chair Mello moved, and it was duly seconded, to amend the original motion, it was voted unanimously to continue this matter until the Library produces more information of the bid process used for the Exterior Building repair of the Library.

15. Communication of Town Administrator, with enclosures, re: Award of contract for West Main Road Sewer Upgrade.

On motion of Vice Chair Mello, duly seconded, it was voted

unanimously to receive said communication.

The summary of bids – line item detail and memorandum from the Town Engineer referenced in the above communication are on file in the Office of the Town Clerk.

16. Resolution of the Council, re: Award of contract for West Main Road Sewer Upgrade.

Town Engineer Warren Hall addressed the Council explaining that this contract is for the West Main Road sewer upgrade. The project should begin on September 15, 2008 and be completed in approximately 60 days.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

17. Communication of Town Administrator, with enclosures, re: Award of contract for 2008 Full Revaluation.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

18. Resolution of the Council, re: Award of contract for 2008 Full Revaluation.

Richard Nagel, Vice President, Appraisal Resource Company, Inc. addressed the Council reviewed the following communication entered here:

Town Administrator Shawn Brown requested that the Council continue this matter to the next regular meeting of the Council.

Vice Chair Mello moved, and it was duly seconded, to pass said resolution.

Vice Chair Mello moved, and it was duly seconded, to amend the original motion, it was voted unanimously to continue this matter to the next regular meeting of the Council August 4, 2008.

19. Communication of Town Administrator, with enclosures, re: Police Pre-Employment Agreement.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication and adopt said proposed agreement.

20. Resolution of the Council, re: Police Pre-Employment Agreement.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

Councillor Sylvia recused himself from the following items #21, #22, #23 and #24, due to a possible conflict of interest.

21. Town Solicitor report to Council, re: Executive Session request (no documentation).

Town Solicitor Frank Holbrook addressed the Council regarding the communication from Attorney Michael T. Brady, received at the June 16, 2008 regular meeting of the Council, relative to Gerald Kempen concerning a request for an executive session. Mr. Holbrook explained that after researching the issue his opinion is that the matter is not appropriate for executive session based on the information contained in the communication. To meet on this matter in executive session would be a violation of the Open Meetings law.

Councillor Silveira noted that he believes all litigation or potential litigation is discussed in executive session. Mr. Silveira thinks it would be prudent and responsible to meet with Mr. Kempen.

Carol Cummings, 738 Indian Avenue, addressed the Council noting that what she is about to say is only her opinion. Ms. Cummings stated that she has contacted the RI Ethics commission and is aware of a conflict of Councillor Sylvia pertaining to the Gerald Kempen issue. She has not made a formal complaint on the conflict. Ms. Cummings expressed concern of the issue.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said verbal report.

22. Communication of Gerald Kempen by and through his Counsel, Michael T. Brady, Esquire, re: Notice of intent to pursue legal action.

Town Solicitor Frank Holbrook addressed the Council noting that he recommends the Council receive said communication and refer the communication to the RI Interlocal Risk Management Trust, as is the practice for all claims against the Town.

On motion of Vice Chair Mello, duly seconded, it was voted to receive said communication and forward to the RI Interlocal Risk Trust for review; Councillor Silviera amended said motion to follow the request of Mr. Brady and Mr. Kempen to avoid litigation, there was no second to the amendment; A vote on the original motion was taken; Council President Rodrigues, Vice Chair Mello, Councillors Barrow and Santos voted YES to said motion; Councillor Silveira voted NO.

23. Communication of Michael T. Brady, Esquire, re: Request for meeting with the Town Council.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

24. Communication of Antone Viveiros, 110 Indian Hill Road, re: Reconsideration to suppress the separation agreement with Mr. Kempen.

Antone Viveiros, 110 Indian Hill Road, noted that when he submitted this communication he was not aware of the above-submitted communications. Mr. Viveiros requests that one member of the Council in the affirmative, make a motion to reconsider and bring it up to vote up again.

Town Solicitor Frank Holbrook, responding to Mr. Viveiros, explained that to take action to reconsider the motion would have had to have been done at a prior meeting, procedurally a vote at this time would be out of order.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

25. Communication of Antone Viveiros, 110 Indian Hill Road, re: Request for Council to allow voters to vote on every Charter Amendment proposed by the Charter Review Committee.

Antone Viveiros, 110 Indian Hill Road, requests the Council to allow voters to vote on all proposed charter amendments. Mr. Viveiros noted that the voters should have the right to vote on all proposed charter amendments.

Councillor Silveiria noted that when establishing the Charter Review Committee he requested all individuals interested in the committee be appointed. Mr. Silveira also noted that he agrees with Mr. Viveiros, all proposed charter amendments should have appeared on the ballot.

On motion of Councillor Silveiria, duly seconded, it was voted unanimously to receive said communication.

26. Resolution of the Council, re: Approving submission of the proposed charter amendments to Office of the Secretary of State for inclusion on the November 4, 2008 General Election ballot.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

27. Resolution of the Council, re: Approving submission of the proposed Open Space bond question to Office of the Secretary of State for inclusion on the November 4, 2008 General Election ballot.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

28. Communication of Councillor Santos, re: Discuss the needs of residents in the community.

Councillor Santos addressed the Council noting it has been a difficult two years. Ms. Santos requests the Council to put all issues aside and work together for the citizens noting that the Town needs a food bank and requests her colleagues to bring ideas about the food bank to the next regular meeting of the Council to be held, August 4, 2008.

Councillor Silveira noted that a food bank is a worthy request however, has concerns with the Town potentially establishing a non-profit entity. Mr. Silveira requests the Town Administrator to investigate organizations within our area that perform the same function and report to the Council at its next regular meeting, August 4, 2008.

Councillor Sylvia requests the Town Solicitor to investigate this matter, as well.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

29. Communication of Emily Hebel, Intern-Art Room/Classroom, re: Request for support for Safety Town program.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication and approve a \$250. donation for said program, said donation to be appropriated from the Council President's Discretionary fund .

30. Communication of Barbara A. VonVillas, re: Resignation from the Personnel Board.

On motion of Councillor Sylvia, duly seconded, it was voted unanimously to receive said communication and accept said resignation with regret.

31. Town Administrator confirmation of appointment of Interim Fire Chief. (no documentation)

Town Administrator Shawn Brown addressed the Council noting the appointment of CPT Michael Shepard to the position of Interim Fire Chief and anticipates that the period will last through September 30, 2008.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to confirm the appointment of CPT Michael Shepard as the Interim Fire Chief.

32. Communication of Town Administrator, with enclosures, re: Award of contract for Accounting Software.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to receive said communication.

The Standard Software License and Services Agreement referenced in the above communication are on file in the Office of the Town Clerk.

33. Resolution of the Council, re: Award of contract for Accounting Software.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to pass said resolution.

PUBLIC FORUM SESSION

Pursuant to Rule 23 of the Rules of the Council, Citizens may address the town on one (1) subject only, said subject of substantive Town business, neither discussed during the regular meeting nor related to

personnel or job performance. Citizens may speak for no longer than five (5) minutes and must submit a public participation form to the Council Clerk prior to the start of the meeting.

Town Clerk

No one addressed the Council during this session.

On motion of Vice Chair Mello, duly seconded, it was voted unanimously to adjourn this meeting at 9:00 P.M.

Wendy J.W. Marshall, CMC

Council Clerk