

**At a Regular Meeting of the Town Council of the Town of Middletown,
RI held at the Middletown Town Hall on Monday, November 16, 2015
at 7:00 P.M.**

Council President Robert J. Sylvia, Presiding

Vice President Robert Kempenaar, II

Councillor Henry F. Lombardi, Jr.

Councillor Paul M. Rodrigues

Councillor M. Theresa Santos

Councillor Antone C. Viveiros

Councillor Barbara A. VonVillas, Members Present

PLEDGE OF ALLEGIANCE TO THE FLAG

RECONSIDERATION

The Middletown Town Council follows the codification of present-day general parliamentary law as articulated in Robert's Rules of Order Newly Revised 10th edition (2000), together with whatever rules of order the Council has adopted for its own governance. The motion to reconsider is one of the motions that can bring a question again before an assembly, and is designed to bring back for further consideration a motion which has already been voted on:

If, in the same session that a motion has been voted on, but no later than the same day or the next day on which a business meeting is held, new information or a changed situation makes it appear that a different result might reflect the true will of the assembly, a member who voted with the prevailing side can, by moving to Reconsider [RONR (10th ed.), p. 304-321] the vote, propose that the question shall come before the assembly again as if it had not previously been considered. (From Robert's Rules of Order Newly Revised In Brief, Robert, Evans et al., De Capo Press, 2004)

There were no reconsiderations.

Council President Sylvia requested a moment of silence in recognition of the veterans that served our country and for the victims of the terrorist attacks in France.

PRESENTATIONS

- 1. Citation of the Council, re: Middletown High School Unified Volleyball Team.**

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to begin presentation and present said citation.

Council President Sylvia presented the Middletown High School Unified Volleyball Team with a citation and a volleyball.

2. Citation of the Council, re: Middletown High School Varsity Girls Soccer Team.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to begin presentation and present said citation.

Council President Sylvia and Vice President Kempenaar presented the Middletown High School Varsity Girls Soccer Team with a citation and a soccer ball.

3. Citation of the Council, re: Middletown High School Junior Varsity Soccer Team.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to begin presentation and present said citation.

Council President Sylvia and Vice President Kempenaar presented the Middletown High School Junior Varsity Girls Soccer Team with a citation and a soccer ball.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to recess this meeting at 7:15 p.m.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to reconvene this meeting at 7:20 p.m.

4. Report of Attorney Marc DeSisto, re: Investigative Report (results of inquiry regarding the purchase of computers by the School Department; documentation to follow).

Council President Sylvia noted that on July 23, 2015 the Council

received the following memorandum, entered

here:

On motion of Council President Sylvia, duly seconded, it was voted unanimously to release a copy of the memorandum above.

Town Solicitor Peter B. Regan noted that the Town retained Attorney Marc DeSisto to investigate the purchase of computers by the School Department. Mr. DeSisto has met with the Town and School Department personnel, not with the Council regarding the matter. This is the first time the Council has seen Mr. DeSisto's report.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said report and begin presentation.

Council President Sylvia noted that there will be no comments taken from the floor this evening regarding this item.

Attorney Marc DeSisto presented the Council with a hard copy report and a PowerPoint summarizing the report.

The complete report is on file in the Office of the Town Clerk.

Council discussion centered around not all school districts use the voucher system, communication between the Town and the School Departments, the Council will read the entire report and filter question through the Council President to Attorney Marc DeSisto, disclosure and purchasing timeline of computers, transparency of all Town Departments and the Town Council and School Committee working together.

PUBLIC FORUM

5. 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. All items discussed during this session will not be voted upon.

Claudia Gorman, 180 Vernon Avenue, addressed the Council reviewed the

following:

Frederick Baillarger, 46 Harvey Road, noted concern with receiving a citation from the Middletown Police Department.

Vice President Kempenaar requested that items #8, #9, #10, #11, #12, #13 and #17 be heard under the regular portion of the agenda.

CONSENT

6. Approval of Minutes, re: Regular Meeting, November 2, 2015.

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

7.

Memorandum of Town Administrator, re: 2016 Legislative Agenda Meeting.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

8. Memorandum of Town Administrator, re: Purchase of new AV System for Town Council Chambers.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

Councillor Viveiros inquired why a new AV System is necessary.

Town Administrator Shawn Brown, responding to Councillor Viveiros, explained that the current system does not allow for the public to see the person speaking at the podium and the sound quality is poor.

9. Memorandum of Town Administrator, re: Recreation Fields – Cost Estimates – Lacrosse Fields.

On motion of Vice President Kempenaar, duly seconded, it was voted

unanimously to receive said memorandum.

Kirsten Klanian, 24 Summerfield Lane, addressed the Council expressing gratitude for reviewing the Town field's space and noted the Lacrosse program is growing.

Councillor Lombardi noted his commitment to make sure Lacrosse is taken care of.

Councillor Viveiros inquired about the fee for moving the playground at Linden Park.

Town Administrator Shawn Brown explained that the lower field will have no construction and it is \$45,000 to move the playground at Linden Park.

10. Communication of Tax Assessor, with enclosure, re: Cancellation of taxes for certain Middletown residents.

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

Councillor Santos inquired if new software would assist the Tax Assessor's office?

Town Administrator Shawn Brown noted that the Tax Assessor's office is auditing accounts and he will have Mr. Durgin respond regarding the need for new software.

11. Resolution of the Council, re: Cancellation of taxes for certain Middletown residents.

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

12. Communication of Tax Assessor and Finance Director, with enclosure, re: Cancellation of taxes for certain Middletown residents.

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

13. Resolution of the Council, re: Cancellation of taxes for certain Middletown residents.

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

14. Resolution of the Council, re: Budget Adjustments – General

Fund.

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

15. At the request of Council President Sylvia, Resolution of the Council, re: Proclaiming Saturday, November 28, 2015 as Small Business Saturday in the Town.

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

16. Communication of Peter M. Grivers, PE, LSP, Senior Project Manager VHB, re: Reconstruction of Two Mile Corner (Routes 138/114), East Main Road & West Main Road, Coddington Highway, Middletown, RI, RIC No. 93116.

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

17. Continued from Regular Meetings September 21, October 19, and November 2, 2015)

Memorandum of Finance Director, thru Town Administrator, with enclosures, re: Preliminary Operating Results – General Fund – Fiscal year ending June 30, 2015. (Administration requests item to be continued to December 7, 2015)

Councillor Santos inquired why this item is continued to December 7, 2015.

Town Administrator Shawn Brown explained that the Council President requested the item be continued to December 7, 2015.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to continue this matter to the December 7, 2015, Regular meeting of the Council.

18. Application of Troubled Soul & Company, LLC (Marc Milici), for RENEWAL for a Tattoo License for use on premises located at 999 West Main Road, for the 2015-2016 licensing year.

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

19. Application for Special Event Permit from Gray Matter Marketing for the Newport Marathon, to be held on October 9, 2016, beginning at 7:30 am.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to grant said Special Event Permit.

20. Approval of December 2015- May 2016 Budget Schedule.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive and approve said December 2015- May 2016 Budget Schedule.

PUBLIC HEARINGS

21. (Continued from October 5, 2015, Regular Meeting of the Council)

Public Hearing (Advertised; Abutters notified)

Public Hearing Remains Open.

An Ordinance of the Town of Middletown (Second Reading)

An Ordinance in amendment to the Town Code of the Town of Middletown, Title XV Land Usage, Chapter 152 Zoning Code, seeking

to change the zoning classifications of Lots 108 and 109 on TAP 114 from Medium Density Residential Traffic Sensitive (R-20A) to Limited Business Traffic Sensitive (LBA). (Planning Board recommendation attached)

Public hearing remains open.

Rosaline Pascoe, 625 Aquidneck Avenue, noted concern that if the zoning is changed and the area becomes a plaza, the neighborhood would be infiltrated with lights and traffic.

Lorraine Morris, 671-673 Aquidneck Avenue, addressed the Council noting opposition to the change in zoning and explained that she and fifty others signed a petition against the change, noting they do not want a strip mall.

Casey Ackerman, 633 Aquidneck Avenue, noted that the neighbors would not be opposed to a senior development or residential

development for the area.

Councillor Viveiros noted that residents will be effected by zoning changes, which are in the Comprehensive Community Plan and suggests delaying State approval until the zoning is understood. Mr. Viveiros suggests a joint meeting with the Planning Board and not to move forward with zoning changes.

Robert Silva, Esquire, representing Mr. Bazariski, noted that Mr. Bazariski is just doing what he thought is the next step to complying with the Comprehensive Community Plan. Attorney Robert Silva introduced as his first Exhibit – The Petition to rezone, with the map, entered

here:

Attorney Silva noted that he would also like to include as exhibits, the letter from Nancy E. Letendre, Esquire, AICP, Principal Planner, The Appraisal from Newport Appraisal Group, LLC, and the Traffic Study by BETA Engineering, which were filed with the Town Clerk at the

first public hearing, with the exception for the letter from Nancy E. Letendre, which was filed this evening.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to recess this meeting at 9:10 p.m.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to reconvene this meeting at 9:19 p.m.

Attorney Robert Silva filed as an exhibit the advisory recommendation by the Planning Board regarding the petition by Samuel's Realty, Inc.

Attorney Robert Silva filed an email from Town Planner Ronald Wolanski, dated Tuesday, September 22, 2015 as an exhibit.

Town Planner Ronald Wolanski was sworn in by Town Clerk Wendy J.W. Marshall to testify regarding the exhibit above.

Town Planner Ronald Wolanski noted one correction in the email above, which is the August 20th date should be October 20th.

Discussion centered around the abutters list being sent first class, the addresses for the abutters were from the Tax Assessor's records, the Middletown Comprehensive Community Plan is official once adopted by the Town Council and the State is not bound to the Comprehensive Plan until approved by the State.

Nancy Letendre, Esquire, AICP, Principal Planner, presented a supplemental report including a map, entered here:

Nancy Letendre, Esquire, AICP, Principal Planner was sworn in by Town Clerk Wendy J.W. Marshall to testify regarding the exhibit above.

Council President Sylvia noted that the Town Council considers Nancy Letendre, Esquire, AICP, Principal Planner an expert.

Discussion centered around potential expansion of the Polo Center, Council has the ability to set limitations on a zoning change, connecting the road from Corporate Park to the Polo Center, curb cuts for the area and if the area could be used for senior housing.

David Bazariski, owner Samuel's Realty, Inc. was sworn in by Town Clerk Wendy J.W. Marshall.

Mr. Bazariski testified that he built the Polo Center, he is the owner of lots 108 and 109, the lots are not appropriate land to build homes and the use for the area is more practical for quality office retail.

Attorney Robert Silva, presented an exhibit “Uses Permitted by Right” and “Uses Permitted by Special Use”, entered here:

Attorney Robert Silva noted that the listing above will not be considered for the area.

Discussion centered around traffic on Aquidneck Avenue, urgency to change the zoning, a medical center having approached Mr. Bazariski to rent space and curb cuts.

J. Nathan Godfrey, Real Estate Appraiser & Consultant, was sworn in by Town Clerk Wendy J.W. Marshall.

Council President Sylvia noted that the Town Council considers J. Nathan Godfrey, Real Estate Appraiser & Consultant an expert.

J. Nathan Godfrey, Real Estate Appraiser & Consultant, testified to the Exhibit 10 Newport Appraisal Group, LLC consulting report, on file in the Office of the Town Clerk.

Paul J. Bannon, Senior Project Manager, BETA Group, was sworn in by the Town Clerk Wendy J.W. Marshall.

Council President Sylvia noted that the Town Council considers Paul J. Bannon, Senior Project Manager, BETA Group an expert.

Paul J. Bannon, Senior Project Manager, BETA Group, testified to the following exhibit, entered here:

Discussion centered around the traffic count on Aquidneck Avenue, traffic measured in June midweek two hours in the morning and two hours in the afternoon and the upgrade of the Green End Avenue/Aquidneck Avenue intersection.

Councillor VonVillas noted that the area is not going to be a strip mall, it is not appropriate for housing, the area is to expand the Polo Center. Ms. VonVillas explained that the petition makes sense.

Attorney Robert Silva noted that he has no other witnesses and requests the Council to support the petition to rezone with limitations.

There being no other persons present, desiring to be heard, public hearing is declared closed.

Councillor Rodrigues explained that the Polo Center is attractive and a good steward of the area. Mr. Rodrigues noted that he does not support the zoning change.

Councillor Lombardi noted support and would like to see an

extension of the Polo Center.

Councillor Viveiros noted that he does not support the zoning change, explaining he does not want to see the Town destroyed to increase the tax base.

Council President Sylvia noted that area residents feel the zoning change causes a quality of life issue. Mr. Sylvia explained that he will not support the request to change the zoning because he is unsure of what the plan for the area is.

Vice President Kempenaar noted that the Polo Center is clean and first class. Mr. Kempenaar explained that Aquidneck Avenue is used by the public as a cut through for traffic going from Newport to Portsmouth.

Mr. Bazariski, owner of Samuel's Realty, Inc., applicant addressed the Council explaining the zoning request is to expand the Polo Center

for retail office.

Attorney Robert Silva suggests the Council place limitations on the petition to rezone.

On motion of Vice President Kempenaar, duly seconded, it was voted to adopt said ordinance on its second reading, Vice President Kempenaar, Councillor Lombardi and Councillor VonVillas voted YES; Council President Sylvia, Councillor Rodrigues, Councillor Santos and Councillor Viveiros voted NO; MOTION FAILED TO PASS.

22. (Continued from October 5, 2015, Regular Meeting of the Council)

Communication of Frank Ben Freitas, Middletown, with enclosures, re: Aquidneck Avenue rezoning.

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

23. (Public Hearing Advertised; Abutters notified)

Public Hearing remains open.

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

Amendments to Town's Comprehensive Community Plan – Land Use Element, page IX-25 and the Implementation Program table, Housing Element, p. VII-15 - Add language to clarify affordable housing units, Housing Element, p. VII-32 - Add a paragraph describing the concept of collaborating in potential efforts to convert existing mobile home parks to cooperatives, Housing Element, p. VII-33 & 37 - Revise language to clarify the town's intent to meet the state's 10% affordable housing goal, Housing Element p. VII-34-37 – Revise the Affordable Housing Strategy table and Housing Element, p. VII-38 and the Implementation Program table. (Planning Board memorandum attached)

Public hearing remains open.

Alice Curran, 429 Forest Avenue, addressed the Council noting concern with zoning changes on Oakview Terrace and any effect zoning changes may have on the area where West House is located.

Town Solicitor Peter B. Regan reviewed the memorandum, entered here:

On motion of Council President Sylvia, duly seconded, to amend L-1.A.6 to take appropriate steps to ensure that the Zoning Ordinance and Zoning Map are consistent with the Future Land Use Plan, as identified on MapL-4, Future Land Use and Map L-5, Potential Zone Changes.

Councillor Viveiros suggested the Town delay approval of the Comprehensive Community Plan amendments and schedule a hearing with the Zoning and Planning Boards.

Town Solicitor Peter B. Regan explained that delaying the amendments will delay state approval of the Comprehensive Community Plan will not benefit the Town.

The motion above was voted on at this time.

On motion of Council President Sylvia, duly seconded, it was voted unanimously to amend L-1.A.6 to take appropriate steps to ensure that the Zoning Ordinance and Zoning Map are consistent with the Future Land Use Plan, as identified on MapL-4, Future Land Use and Map L-5, Potential Zone Changes.

There being no other persons present, desiring to be heard, public hearing is declared closed.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to adopt said ordinance on its second reading, as

amended.

TOWN COUNCIL

24.

Memorandum of Council President Sylvia, re: Moratorium.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

On motion of Council President Sylvia, duly seconded it was voted unanimously to consider adopting a temporary moratorium on the construction of large shopping centers, as defined in the zoning ordinance, and buildings with a footprint of over 35,00 square feet, in the General Business and General Business Traffic Sensitive Zones. The purpose of this moratorium would be to allow time for the Planning Board and the Town Council to prepare and adopt

regulations for the new General Business / Mixed Use Zone called for in the Comprehensive Plan. The moratorium, if enacted as an ordinance, would go into effect until March 2, 2016, unless lifted sooner.

25. At the request of Council President Sylvia, re: Discussion of December 2015 and January 2016 Regular Meetings. (No Documentation)

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to cancel the December 21, 2015 and January 4, 2016 Regular Meetings of the Council.

26. Communication of Councillor Viveiros, re: Request Council to amend entire Comprehensive Plan to align with the Town Zoning.

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

Councillor Viveiros read the communication above into the record.

On motion of Councillor Viveiros, duly seconded, it was voted to propose a joint session with the Planning and Zoning Boards to discuss discrepancies and bring both the Zoning Ordinances and Comprehensive Plan ordinance in line, Councillor Santos and Councillor Viveiros voted YES; Council President Sylvia, Vice President Kempenaar, Councillor Lombardi, Councillor Rodrigues and Councillor VonVillas voted NO to said motion; MOTION FAILED TO PASS.

TOWN ADMINISTRATOR

27.

Memorandum of Finance Director, thru Town Administrator, with enclosures, re: Contract Award: MIDD-016-004 Engineering –

Wapping Road to Little Creek.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

Town Administrator Shawn Brown reviewed the memorandum above.

Councillor Lombardi left the dais at 12:32 am.

**28. Resolution of the Council, re: Contract Award: MIDD-016-004
Engineering – Wapping Road to Little Creek.**

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

29. Memorandum of Town Administrator, with enclosures, re: Weston & Sampson Proposal for Valley Environmental Services.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

On motion of Councillor Santos, duly seconded, to look into handicap accessible trails

Town Administrator Shawn Brown reviewed the memorandum above.

Town Solicitor Peter B. Regan explained that handicap trails would be evasive to the area because it is an environmentally impacted site.

On motion of Councillor Viveiros, duly seconded, it was voted

unanimously to table Councillor Santos motion.

Councillor Lombardi returned to the dais at 12:35 am.

30. Resolution of the Council, re: Award of Contract – Weston & Sampson – Environmental Services - Town Center in the Valley Site.

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

31. Memorandum of Finance Director, thru Town Administrator, with enclosures, re: Contract Award: MIDD-016-005 Baseball Field Improvements.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

Town Administrator Shawn Brown reviewed the memorandum above.

**32. Resolution of the Council, re: Contract Award: MIDD-016-005
Baseball Field Improvements.**

**On motion of Vice President Kempenaar, duly seconded, it was voted
unanimously to pass said resolution.**

**33. Memorandum of Finance Director, thru Town Administrator, with
enclosures, re: Contract Award: Baseball Field Improvements –
Backstops - Oliphant Field.**

**On motion of Vice President Kempenaar, duly seconded, it was voted
unanimously to receive said memorandum.**

Town Administrator Shawn Brown reviewed the memorandum above.

34. Resolution of the Council, re: Award of Contract - Baseball Field Improvements – Backstops - Oliphant Field.

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

35. Memorandum of DPW Director to Finance Director, thru Town Administrator, with enclosures, re: FY16 Capital Improvement Program (CIP), Project #851-2008-002 Vehicle Pool, Skid Steer Loader with High Flow Snow Blower.

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to receive said memorandum.

Town Administrator Shawn Brown reviewed the memorandum above.

36. Resolution of the Council, re: Purchase of Skid Steer Loader with High Flow Snow Blower.

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

On motion of Vice President Kempenaar, duly seconded, it was voted unanimously to adjourn said meeting at 12:47 a.m. on Tuesday, November 17, 2015.

Wendy J.W. Marshall, CMC

Town Clerk

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